

Smt Poornima vs Sri Raghavendra B Shet on 9 July, 2024

Author: V Srishananda

Bench: V Srishananda

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NC: 2024:KHC:26292
CRL.RP No. 121 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA
CRIMINAL REVISION PETITION NO. 121 OF 2021

BETWEEN:

1. SMT. POORNIMA,
W/O RAGHVENDRA B SHET,
C/O VAMANA SHET,
AGED ABOUT 37 YEARS,
R/O PRESENTLY RESIDING AT
C/O RAGHAVENDRA RAYKAR,
ADVOCATE, C.P BAJAR, SIRSI,
UTTARA KANNADA DISTRICT - 581 401.

2. KUM. VARSHA @ AMMU,
D/O RAGHAVENDRA SHET,
AGED ABOUT 6 YEARS, MINOR,
REPRESENTED BY HER NATURAL
GUARDIAN MOTHER SMT. POORNIMA,

Digitally
signed by
MALATESH
KC
W/O RAGHVENDRA SHET,
D/O VAMANA SHET,
AGED ABOUT 37 YEARS,

Location:
HIGH
COURT OF
KARNATAKA
R/O PRESENTLY RESIDING AT
C/O RAGHAVENDRA RAYKAR,
ADVOCATE, C.P BAJAR, SIRSI,
UTTARA KANNADA DISTRICT - 581 401.

...PETITIONERS

(BY SRI. ANANDEESWARA D.R, ADVOCATE)

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NC: 2024:KHC:26292

AND :

SRI RAGHVENDRA B SHET,
S/O BHAGAVANTH SHET,
AGED ABOUT 42 YEARS,
GOLD MERCHANT,
RESIDING AT RAJAMARGA,
SIDDAPURA TOWN - 581 355,
UTTARA KANNADA DISTRICT.

. . . RESPONDENT

(BY SRI. VENKATESH SOMAREDDI, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 OF CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT AND ORDER DATED 22.10.2020
PASSED BY THE III ADDITIONAL SESSIONS JUDGE,
SHIVAMOGGA IN CRL.A.NO.196/2019 AND CONFIRM THE
ORDER DATED 01.08.2018 MADE IN CRL.MISC.NO.100/2018
BY THE II ADDITIONAL SENIOR CIVIL JUDGE AND J.M.F.C.,
SHIVAMOGGA BY ALLOWING THIS CRL.RP.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri. Anandeeswara. D. R., the learned counsel for revision petitioners and Sri. Venkatesh Somareddy, the learned counsel for respondent.

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2. Revision petition is filed by the wife challenging the order passed by the First Appellate Court in Crl.A.No.196/2019 dated 22.10.2020 where under the Appellate Court felt the necessity of remanding the matter to the Trial Magistrate after entertaining the application filed under I.A.3 under Section 391 of Cr.P.C. and I.A.No.4 under Section 311 of Cr.P.C.

3. Facts in brief which are utmost necessary for disposal of the revision petition are as under:

4. First revision petitioner and the respondent are the wife and husband and from their matrimonial relationship, second revision petitioner is born.

5. There are serious disputes in regard to matrimonial relationship which is necessitated the revision petitioner to approach the Jurisdictional Magistrate under the provisions of Protection of Women

from Domestic Violence Act, 2005 in Crl.Misc.No.100/2018.

6. The said petition on contest came to be partly allowed by order dated 01.08.2019. Against the said order, the respondent filed an appeal before the District Court, Shivamogga in Crl.A.No.196/2019 interalia filed two NC: 2024:KHC:26292 applications as I.A.Nos.3 and 4 under Sections 391 and 311 of Cr.P.C.

7. Learned Judge in the First Appellate Court after entertaining the applications of the revision petitioner, found it necessary that additional evidence has got a bearing on the merits of the matter and allowed the appeal and remitted the matter to the Trial Magistrate by order dated 22.10.2020.

8. Being aggrieved by the same, the wife and daughter are before this Court in this revision petition.

9. Sri. Anandeeswara, learned counsel for revision petitioners contended that the First Appellate Court itself could have been recorded the additional evidence and there was no necessity to remit the matter to the Trial Court for the said purpose which ultimately resulted in the disposal of the petition filed by the revision petitioners and therefore, sought for allowing the revision petition.

10. Per contra counsel for the respondent supports the impugned order.

11. Having heard the parties in detail, this court perused the material on record meticulously.

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12. On such perusal of the material on record, it is crystal clear that there is dispute with regard to the matrimonial relationship among the parties.

13. Wife filed petition under Section 12 of the Protection of Women from Domestic Violence Act was registered in Crl.Misc.100/2018 and the same was disposed of by order dated 01.08.2019 on merits. Against which, the husband preferred an appeal before the First Appellate Court which on contest came to be allowed and the matter is remitted to the trial Court after entertaining the applications for placing the additional evidence and permitting the husband to recall the witnesses and proceed with the case further.

14. As could be seen from the material on record especially the order of the First Appellate Court, the learned Judge in the First Appellate Court felt the necessity of placing additional evidence on record in as much as the same has got the bearing on the merits of the matter including the question of assessing of the quantum of compensation in a proper manner.

15. The matter is pending before this Court for the last three years for admission. By this time the main matter itself NC: 2024:KHC:26292 would have been disposed of before the learned Trial Magistrate if the order impugned was not challenged before this Court.

16. Taking note of the fact that the additional evidence alone is to be placed on record and the matter requires re-consideration after the additional evidence is placed on record, if the Trial Magistrate is directed to expeditiously dispose of the Crl.Misc.100/2018 in terms of the order passed by the learned Judge in the First Appellate Court in Crl.A.No.196/2019 vide order dated 22.10.2020 ends of justice could be made.

17. Accordingly, the following:

ORDER

- i) Criminal revision petition stands disposed of.
- ii) The learned Trial Magistrate who is II Additional Civil Judge, Senior division and JMFC, Shivamogga, is directed to expeditiously disposed of Crl.Misc.No.100/2018 in terms of the order passed by the First Appellate Court in Crl.A.No.196/2019 dated 22.10.2020 not later than 30.11.2024 after affording suitable opportunities for the parties.
- iii) It is made clear that the parties shall co-operate for the early disposal of the matter.

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iv) Parties shall appear before the Trial Magistrate without further notice on 29.07.2024.

Sd/-

JUDGE LDC CT:: BHK

Smt. Seembran D/O Rabbani Bhatti vs Shri Moulali S/O Bashasab Shiggavi on 1 August, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 1ST DAY OF AUGUST 2024

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 100361 OF 2023
C/W
WRIT PETITION NO. 100977 OF 2023

IN CRL. P No.100361/2023

BETWEEN:

SRI. VISHWANATH S. HEGADE,
AGE: 54 YEARS, OCC: ADVOCATE,
R/O: SUBRAHAMANYA BUILDING,
OPP: GOVIDRA HALL, VIKAS ASHRAM,
CIRCLE SIRSI, TQ: SIRSI,
DIST: KARWAR - 581401.

...PETITIONER

(BY SRI. VENKATESH M. KHARVI AND SMT. NIRMALA V. DODAMANI,
ADVOCATES)

AND:

YASHAVANT
NARAYANKAR SHRI. MOULALI S/O. BASHASAB SHIGGAVI,
 AGE: 22 YEARS, OCC: COOLIE,
 R/O: KARADAGI, TQ: SAVANUR,

Location: HIGH DIST: HAVERI - 581126.

COURT OF

KARNATAKA (BY SRI. S.A. KOLAKAR, ADVOCATE)

...RESPONDENT

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
SEEKING TO QUASHED THE ORDER PASSED BY THE JUDICIAL
MAGISTRATE FIRST CLASS-II COURT, BELAGAVI IN PRIVATE
COMPLAINT NO.105/2021 DATED 03.03.2022 IN C.C.NO.1284/2022
FOR THE OFFENCE PUNISHABLE U/SEC. 493, 494, 496 R/W 149 OF
IPC AGAINST THE ACCUSED NO.8 BY ALLOWING THE PETITION.

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

IN WP No.100977/2023

BETWEEN:

1. SMT. SEEMBRAN D/O. RABBANI BHATTI,
AGE: 23 YEARS, OCC: TAILORING AND TUITION,
R/O: NEAR WATER TANK, GANDHI NAGAR,
TQ: MUNDAGOD, DIST: KARWAR - 581349.
2. SRI. MOULALI S/O. KHADARSAB HARAKONI,
AGE: 27 YEARS, OCC: BUSINESS,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.
3. SRI. RABBANI S/O. GHOUSESAB BHATTI,
AGE: 57 YEARS, OCC: MECHANIC,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
4. SMT. RAZIYA W/O. RABBANI BHATTI,
AGE: 51 YEARS, OCC: LABOUR WORK,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
5. SMT. BASIRA D/O. KHADARSAB SHIGGAVI,
AGE: 46 YEARS, OCC: HOUSEHOLD,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.
6. SRI. REHAN S/O. RABBANI BHATTI,
AGE: 20 YEARS, OCC: LABOUR,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
7. SMT. BASIRA D/O. RABBANI BHATTI,
AGE: 21 YEARS, OCC: LABOUR WORK,
R/O: NEAR WATER TANK,
GANDHI NAGAR, DIST: KARWAR - 581349.

...PETITIONERS

(BY SRI. VENKATESH M. KHARVI AND SMT. NIRMALA V. DODAMANI
ADVOCATES)

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

AND:

SHRI. MOULALI S/O. BASHASAB SHIGGAVI,
AGE: 22 YEARS, OCC: COOLIE,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.

...RESPONDENT

(BY SRI. SAYADAHMED A. KOLAKAR, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA R/W SEC. 482 OF CR.P.C PRAYING TO ISSUE THE WRIT OF CERTIORARI OR ANY ORDER OR DIRECTIONS TO QUASH THE ORDER PASSED BY THE JMFC - IV COURT, BELAGAVI IN PC NO.105/2021 IN CC NO.1284/2022 DATED 03/03/2022 FOR THE OFFENCE SECs. 493, 494 AND 496 R/W 149 OF IPC VIDE ANNEXURE-W.

THESE PETITIONS COMING ON HEARING ORDERS THIS DAY,
THE COURT MADE THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL ORDER

Crl.P.No.100361/2023 is filed by accused No.8 praying to quash the order dated 03.03.2022 passed in private complaint No.105/2021 by JMFC-IV Court, Belagavi registering of the criminal case for offences punishable under Sections 493, 494 and 496 read with Section 149 of NC: 2024:KHC-D:10891 Indian Penal Code (hereinafter referred as to "IPC" for brevity) and consequent registration of C.C.No.1284/2022.

2. W.P.No.100977/2023 is filed by accused Nos.1 to 7 praying to issue writ of certiorari to quash the order dated 03.03.2022 passed in private complaint No.105/2021 by the JMFC-IV Court, Belagavi registering criminal case for offences punishable under Sections 493, 494 and 496 read with Section 149 of IPC and consequent to registration of C.C.No.1284/2022.

3. Since both petitions arise out of the same order hence, they are taken together for disposal.
4. The respondent -complainant is husband of accused No.1 -Smt. Simran. Marriage of the respondent - complainant with accused No.1 has taken place on 29.05.2020. It is alleged in the complainant that accused No.2 married accused No.1 on 02.05.2021 during subsistence of marriage of complainant with accused No.1. It is also alleged that accused Nos. 3 to 8 in collusion with each other solemnized the marriage of accused No.1 with NC: 2024:KHC-D:10891 accused No.2 on 02.05.2021 at about 11.30 a.m. at Yamanapura Village as per muslim rituals.
5. It is stated in the complaint that the marriage of respondent -complainant with accused No.1 was subsisted and there was no divorce and therefore, the marriage of accused No.1 with accused No.2 attracts Sections 493, 494 and 496 read with Section 149 of IPC. The respondent/ Complainant in that regard has filed a private complaint No.105/2021 on the file of IV JMFC Belagavi. The learned Magistrate has recorded a sworn statement of complainant as CW.1 and two witnesses as CW.2 and CW.3 and got marked 6 documents as Ex.C.1 to Ex.C.6. Learned Magistrate by his order dated 03.03.2022 has ordered to register a criminal case against accused No.2 for offences punishable under Sections 493, 494 and 496 read with Section 149 of IPC and consequently, C.C No.1284/2022 came to be registered against accused Nos.1 to 8 for the said offences. The said order dated 03.03.2022 and consequent registration of the criminal case has been sought to be quashed in these petitions.
- NC: 2024:KHC-D:10891
6. Heard the learned counsel for the petitioners and learned counsel for the respondent.
7. Learned counsel for petitioners would contend that no marriage has taken place on 02.05.2021 between accused Nos.1 and 2 as alleged at Yamanapur village and the persons appearing in the photographs - Ex.C.1 to Ex.C.4 are not the accused Nos.1 and 2. The accused No.1 has filed a suit in O.S No.67/2021 against her husband i.e., complainant/ respondent on 14.09.2021 seeking dissolution of the marriage and prior to that she had filed a petition under Protection of Women from Domestic Violence Act against the respondent/ complainant and others in Crl. Misc. No.16/2021 and it came to be filed on 09.04.2021 and therefore to take revenge against accused No.1, the complainant has filed a false complaint against the accused persons. The accused No.1 has also filed the petition seeking maintenance under Section 125 of Cr.P.C in Crl. Misc. No.47/2021 on the file of JMFC, Mudhol and it is also filed on 14.09.2021. Therefore, the respondent/ complainant as a counter blast has filed a private NC: 2024:KHC-D:10891 complaint against the accused persons making false allegations. The accused No.2 married one Heena Kousar on 25.04.2019 and he is having a child out of that marriage. He contended that the Jamat has issued a certificate that accused No.1 had married Heena Kousar. As accused No.2 married to Heena Kousar there is no question of marrying accused No.1 who is wife of respondent/ complainant. The said suit OS No.67/2021 has been filed by accused No.8 who is a petitioner in Crl. P. No.100361/2023 as a Advocate for Seembran against the respondent/ complainant and therefore, he has been arrayed as accused No.8 in the complaint. The photographs produced and marked as Ex.C.1 to Ex.C.5 are not that of accused Nos.1 and 2 and the accused Nos.3 to 8 are not seen in those photographs. He placed

reliance on the decision of the Hon'ble Apex Court in the case of Ramesh Chandra Gupta Vs. State of Uttar Pradesh and Others reported in 2022 Live Law (SC) 993 in which the Apex Court has considered the case of Bhajan Lal and Neeharika Infrastructure Private Limited, the NC: 2024:KHC-D:10891 grounds on which the criminal proceedings can be quashed. He also relied on the decision of the Co-ordinate Bench of this Court rendered in Crl.P. No.101812/2023 contending that the offences under Sections 494, 495 and 496 of IPC are not attracted against the members of the extended family and they cannot be prosecuted for those offences. He also placed reliance on the decision of the Co-ordinate Bench of this Court rendered in Crl.P. No.7517/2017 contending that only the person who married during the subsistence and the life time of earlier spouse and the earlier marriage could be prosecuted for offence under Section 494 of IPC. He contends that accused No.2 is the cousin brother of accused No.1 and therefore, there is a grudge against the accused No.2 by the complainant. On these grounds he prays to quash the proceedings against the petitioners.

8. Learned counsel for the respondent would contend that the accused No.1 and respondent/complainant resided in a rented house of Karadagi village. The case filed by the accused No.1 against the NC: 2024:KHC-D:10891 complainant will not come in the way since accused No.2 by marrying the accused No.1 has committed the offences alleged against him. The accused No.1 has filed a private complaint No.105/2021 against the respondent/complainant and it came to be referred to Police for investigation and the Police filed B-report in the said case and it indicates that a false complaint has been filed by the complainant against the respondent. The respondent appeared in all cases filed by accused No.1 and he is contesting those cases on merits. He supports the reasoning assigned by the learned Magistrate in ordering registration of the criminal case and issue of process against them. He contends that the evidence of CW.1 to CW.3 and documents Ex.C.1 to Ex.C.7 are sufficient to establish the offences alleged against the accused persons. On these grounds he prayed for dismissal of both the petitions.

9. Having heard the learned counsels, the Court has perused the material placed on record.

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10. It is not in dispute that accused No.1 is a wife of respondent/complainant and their marriage has been solemnized on 29.05.2020 and it is still subsisting. It is also not in dispute that the accused No.1 had filed OS No.67/2021 on 14.09.2021 against the respondent/complainant seeking dissolution of marriage. It is also not in dispute that accused No.1 has filed Crl.Misc. No.16/2021 on 09.04.2021 against the respondent and others and filed Crl.Misc. No.47/2021 under Section 125 of Cr.P.C against the respondent/complainant seeking maintenance.

11. On going through the averments of the complaint and sworn statement of complainant/CW.1 indicate that accused No.2/ Sri.Moulali has married the accused No.1 Seembran on 02.05.2021 at Yamanapur village of Belagavi. The said version of CW.1 has a support of the sworn statement of 2 witnesses namely Hazaresab Allabhaksha Kolkar (CW.2) and Hazaresab Mahadahaniph Baradukhane (CW.3). CW.2 and CW.3 also stated that they witnessed the marriage of accused No.2

with accused

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NC: 2024:KHC-D:10891 No.1 on 02.05.2021 at 11:30 am at Yamanapur village. As on the date of the said marriage i.e., on 02.05.2021, the marriage of the complainant/ respondent with accused No.1 Seembran was subsisting. The said act of marriage of accused No.2 with accused No.1 during the subsistence of marriage of respondent/ complainant with accused No.1/ Seembran attracts offence under Section 494 of IPC as against accused Nos.1 and 2.

12. Case which came to be registered against the accused Nos.1 to 8 is for offences under Section 493, 494 and 496 r/w Sections 149 of IPC. Therefore, it is necessary to extract the said provisions namely 493, 494 and 496 of IPC.

"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.-Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Marrying again during lifetime of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description

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NC: 2024:KHC-D:10891 for a term which may extend to seven years, and shall also be liable to fine.

Exception.- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

496. Marriage ceremony fraudulently gone through without lawful marriage.-Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to

Smt. Seembran D/O Rabbani Bhatti vs Shri Moulali S/O Bashasab Shiggavi on 1 August, 2024
seven years, and shall also be liable to fine.

13. On careful reading of Section 494, it applies to the parties to the second marriage and not the persons who were present at the ceremony of the second marriage. Even though, the accused Nos.3 to 8 are stated to be present at the ceremony of marriage on 02.05.2021 between accused Nos.1 and 2, the said aspect will not attract the offence under Section 494 of IPC.

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14. Either in the averments of the complaint or in the sworn statement of CW.1 to CW.3, there is no any averments of cohabit or sexual intercourse between accused Nos.1 and 2. Therefore, the offence under Section 493 of IPC is not attracted against the accused Nos.1 and

2. The said offence under Section 493 is also not attracted against the other accused namely accused Nos.3 to 8. As allegation against them is that they were present at the time of ceremony of marriage between accused Nos.1 and

2. An offence under Section 494 of IPC is different from the offence under Section 496 of IPC. If the accused intends that there should be a valid marriage and performed the necessary ceremonies during the life time of other spouse, then it may be a case under Section 494 of IPC, but if the accused only intends that there should only a marriage and dishonestly and fraudulently goes through the marriage ceremony knowing fully well that he is not legally married thereby it is an offence under Section 496 of IPC. There is no allegation either in the complaint or in the sworn statement of CW.1 that accused

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NC: 2024:KHC-D:10891 No.2 has dishonestly and fraudulently has gone through the marriage ceremony knowing fully well that he is not legally married. To attract offence under Section 496 of IPC, the essential ingredients are i) dishonestly or with fraudulent intention going through the ceremony of marriage ii) Knowledge on the part of the person going through the ceremony that he is not lawfully married. On considering the said ingredients the said offence is also not attracted against the persons who are present at the ceremony of the second marriage.

15. In view of the above, no offence is made out against the accused Nos.1 to 8 for offences under Section 493 and 496 of IPC. There is also no case made out to attract offences under Section 494 of IPC against accused Nos.3 to 8.

16. In view of the above, the following:

ORDER

- i) The Crl.P.No.100361/2023 is allowed.
- ii) The W.P.No.100977/2023 is allowed in part.

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iii) The order dated 03.03.2022 passed in PC No.105/2021 by the JMFC II Court, Belagavi and consequent registration of CC No.1284/2022 against accused Nos.3 to 8 is quashed. The registration of a case against accused Nos.1 and 2 for offence under Section 493 and 496 also stands quashed.

iv) The trial Court to continue the proceedings
against accused Nos.1 and 2 in CC

No.1284/2022 for offence under Section 494 of IPC.

v)

vi) Sd/-

(SHIVASHANKAR AMARANNAVAR) JUDGE DSP,PJ Ct:anb

Smt. Sony @Sonia Patil vs The Assistant Commissioner on 12 July, 2024

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R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF July 12, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.5479 OF 2020

C/W

CRIMINAL PETITION NO.4818 OF 2020

WRIT PETITION NO.7470 OF 2021 (GM-RES)

WRIT PETITION NO.7539 OF 2021 (GM-RES)

IN CRL.P NO. 5479/2020

BETWEEN:

1. BALASAHEB PATIL
S/O. LATE. BABAGOURA PATIL
AGED ABOUT 72 YEARS
RETD. DEPUTY SUPERINTENDENT OF POLICE

2. SMT. CHANNAMMA PATIL
W/O. BALASHEB PATIL
AGED ABOUT 63 YEARS

BOTH ARE R/AT NO.004, GROUND FLOOR
PYRAMID TEMPLE BELL APARTMENT
KENCHENAHALLI, RAJARAJESWARINAGAR
BANGALORE-560 098.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

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AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS

2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS

3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

(RESPONDENT 2 AND 3 ARE MINORS
REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN).

4. ANIL KUMAR
S/O BALASAHEB PATIL
AGED ABOUT 43 YEARS
ALL ARE R/AT NO.73, KPA BLOCK
I MAIN, CHANDRA LAYOUT
BANGALORE-560 040.

... RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED UNDER U/S.482
CR.P.C, PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 PENDING ON THE FILE OF
M.M.T.C.-IV, BENGALURU AND ALLOW THIS CRL.P.

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IN CRL.P.NO.4818/2020

BETWEEN:

1. BASANAGOUDA
S/O. LATE. BABAGOUDA PATIL
AGED ABOUT 60 YEARS
OCC. ENGINEER
R/AT NO. 115, 2ND MAIN
AMRUTHNAGAR, HEBBAL
BANGALORE-560 092.

2. SMT. ASHWINI
W/O. SATISH RACHANNA
AGED ABOUT 40 YEARS
R/AT FLAT NO. L-806
BRIGADE METROPOLIS
GARUDACHARAPALYA
MAHADEVPURA
BANGALORE-560 048.

3. SMT. SHANTALA
W/O. JAISHEEL DHANDARGI
AGED ABOUT 37 YEARS

PRESENTLY R/AT PYRAMID TEMPLE BELLS
GROUND FLOOR, B BLOCK
IDEAL HOMES LAYOUT
RR NAGAR, BANGALORE-560040.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

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AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS

2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS

3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

RESPONDENTS 2 & 3 ARE MINORS REPRESENTED BY
THEIR MOTHER AND NATURAL GUARDIAN
RESPONDENT NO. 1

ALL ARE R/AT NO.73, KPA BLOCK,
I MAIN , CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED U/S.482 CR.P.C,
PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 ON THE FILE OF IV M.M.T.C.,
BENGALURU AND ALLOW THIS CRIMINAL PETITION.

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IN W.P.NO.7470/2021

BETWEEN:

SRI ANIL KUMAR
S/O SRI.BALASAHEB BABAGOUDA PATIL
AGED 42 YEARS

R/AT HOUSE NO.73
KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONER

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.
2. SRI. BALASAHEB BABAGOUDA PATILALIAS B.B.
PATIL
S/O LATE SRI. BABAGOUDA PATIL
R/AT HOUSE NO.73, KPA BLOCK
1ST MAIN, CHANDRA LAYOUT
BANGALORE-560 040.
3. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R3;
SRI AJAY J.N., ADVOCATE FOR R2)

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THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DTD 30.03.2021 VIDE ANNX-C
PASSED BY R-1 AND ETC.

IN W.P.NO.7539/2021

BETWEEN:

1. SMT. SONY @SONIA PATIL
W/O SRI ANIL KUMAR PATIL
AGED ABOUT 37 YEARS
2. ANSH PATIL
S/O ANIL KUMAR PATIL
AGED ABOUT 7 YEARS
3. AKIRA
D/O ANIL KUMAR PATIL

AGED ABOUT 3 YEARS

PETITIONER NOS.2 & 3 ARE MINORS ARE
REPRESENTED BY THEIR LEGAL GUARDIAN I.E
PETITIONER NO.1

ALL ARE RESIDENTS OF NO.73
KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONERS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

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AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560009
2. MR. BALASAHEB BABAGOUDA PATIL ALIAS B.B.
PATIL
S/O LATE BABAGOUDA PATIL
AGED ABOUT 71 YEARS
GARAGE PORTION OF GROUND FLOOR
HOUSE LPREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGLAORE-560040.
3. MR. ANIL KUMAR
S/O BALASAHEB BABAGOUDA PATIL
AGED ABOUT 42 YEARS
GROUND FLOOR
HOUSE PREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGALORE-560040.
4. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R4;
SRI AJAY J.N., ADVOCATE FOR R2;
SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DATED 30.03.2021 VIDE
ANNEXURE-B PASSED BY R-1 AND ETC.

THESE CRIMINAL PETITIONS AND WRIT PETITIONS
HAVING BEEN HEARD AND RESERVED FOR ORDERS ON
22.06.2024, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the matter at hand, various legal provisions and acts are invoked creating a complex web of familial and legal disputes surrounding the residential property No.73 in Chandra Layout, Bengaluru. The legal saga surrounding the residential property in Chandra Layout, Bengaluru unfolds a tangled narrative of familial discord between a father and a son. These petitions are filed by father, mother and daughters on one side and the daughter-in-law on the other side. Therefore, this Court deems it fit to cull the family tree produced in the partition suit filed by son (Anilkumar) against his father, uncle, mother and sisters in O.S.No.41/2019. The family tree is as under:

Babagouda @ Babugouda (Dead) | | Shantabai (wife) (died) | | | | Balasaheb
Umannagouda Basannagouda (D1) @ Umeshgouda (D2) (D3) | | | Channamma
(wife) (D4) | | | _____ | | | Anil Ashwini
Shantala Swati (Pltf.) (D5) (D6) (D7)

2. The father BalasahebPatil, is a Retired Police Officer and therefore, claims that the residential house at Chandra Layout, Bengaluru is his self acquired property. The father asserts that while he was serving as Police Officer, he applied for allotment of plot to the BDA and the authorities have allotted a site on 31.03.1999 and sale deed is executed on 29.03.2014. At its core lies a fundamental disagreement between BalasahebPatil and his son, Anilkumar, regarding the nature of the property. The family owns several agricultural lands, commercial properties and sites at Bijapur and other cities. There appears to be dispute after BalasahebPatil asserted that the residential house at Chandra Layout is his self acquired property whereas his son Anilkumar contends it to be a joint family ancestral property. This foundational dispute has led to a series of legal battles between father and son that delve into complex intersections of family dynamics and legal statutes.

3. The father BalasahebPatil lodged a complaint before the Deputy Commissioner of Police on 30.04.2019 requesting the police officer to take suitable action against his son and deliver possession of second and third floors of the residential house to enable him to lead a peaceful life. This action of father led son to institute a partition suit in O.S.No.41/2019 on the file of the Senior Civil Judge, Sindgi. It seems on receipt of summons, father (BalasahebPatil) filed a petition in Misc. Petition No.69/2019-20 against son under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "Senior Citizens Act, 2007") requesting to evict the

son and his family members from the schedule property and to handover physical possession of second floor and third floor. Simultaneously, Anilkumar's wife namely Sony @ Sonia Patil initiates legal action under the Domestic Violence Act, 2005 (for short "D.V. Act, 2005) alleging harassment and seeking remedies against in-laws and sisters-in-law. The miscellaneous petition filed by father was allowed by the authority and Anilkumar (son) was directed to handover vacant possession to the father.

4. Challenging the order passed by the Assistant Commissioner under Sections 5 and 23 of D.V.Act, 2005 calling upon the son to handover vacant possession, two petitions are filed before this Court. Anilkumar (son) assailing the eviction order of the Tribunal dated 30.03.2021 has filed a petition in W.P.No.7470/2021. The daughter-in-law and children though not party before the Tribunal have also questioned the eviction order of the Tribunal in W.P.No.7539/2021. The proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 is also challenged by the in-laws in two petitions. Balasaheb Patil's brother namely Basanagouda Patil assailing the proceedings initiated by daughter-in-law under the provisions of the D.V.Act, 2005 has filed Crl.P.No.4818/2020. Balasaheb Patil and his wife are seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 by filing Crl.P.No.5479/2020 (D.V.Act, 2005).

5. Learned counsel appearing for the father, mother and daughters in all these petitions placing reliance on the judgments has vehemently argued and contended that the residential house situated at Chandra Layout, Bengaluru, is self acquired property of the father and has further pointed out that father while serving as a Police Officer applied for a vacant site and the BDA executed lease cum sale agreement dated 05.05.1999 and thereafter obtained registered sale deed from BDA. He would also point out that father has constructed a residential house in 1999 and the construction is completed somewhere in the month of October 2005 while he was serving as a Police Officer. He would further point out that first and second floor is constructed in 2008-09 and the constructions are made by father by utilizing savings and retirement funds and therefore, son has no right in the residential house.

6. Reiterating the grounds, he would further vehemently argue and contend that daughter-in-law Sony has no locus to question the order passed by the Assistant Commissioner under Sections 5 and 23 of Senior Citizen Act, 2007 as she is not a party to the proceedings. Therefore, W.P.No.7539/2021 is not maintainable and the same is liable to be dismissed. He has vehemently argued and contended that daughter-in-law's invocation of domestic violence is patently manipulative and the proceedings are initiated only to get over the eviction order passed under the Senior Citizens Act, 2007. He would further point that there are absolutely no allegations against husband Anilkumar by the daughter-in-law and the sole allegations are that it is a shared household as it belongs to the joint family. Therefore, he would contend that the proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 being collusive are liable to be quashed by this Court.

7. Learned counsel placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of Skanda Sharath vs. Assistant Commissioner¹ would point out that even if there is a claim by the rival parties asserting that properties are joint family properties, the Tribunal can order for eviction even in respect of a joint family property. Referring to the partition suit filed by the son, he would

point out that the trial Court while considering the application filed under Order 39, at the first instance, rightly declined to grant injunction having taken cognizance of title documents insofar as residential house at Bengaluru is concerned. 2019 SCC Online Kar 3533

8. Reliance is placed on the judgment rendered by the Delhi High Court in the case of Aditya Gupta vs. Narender Gupta & Others². While taking this Court through the dictum laid down by the Delhi High Court, he would point out that the dispute regarding nature of the property needs to be adjudicated by a competent civil Court and until the rights are decided in a final decree proceedings, it is immaterial whether the property is joint family property and therefore, Balasaheb Patil as a senior citizen is entitled to seek eviction of his son by invoking the provisions of Senior Citizens Act, 2007.

9. Referring to Section 27 of Senior Citizens Act, 2007 he would further contend that jurisdiction of Civil Court stands ousted under Section 27 of Senior Citizens Act, 2007 and therefore, pendency of partition suit in O.S.No.41/2019 will not act as an 2023 SCC Online Del 1127 impediment for a senior citizen to work out efficacious remedy provided under Senior Citizens Act, 2007.

10. He would vehemently argue and contend that in the present set of facts the son cannot set up his wife to defeat the proceedings conferred on a senior citizen under the provisions of Senior Citizens Act, 2007. He would contend that son has set up his wife and proceedings under D.V. Act, 2005 are initiated only to get over the eviction order passed by the Tribunal. He would vehemently counter the respondents' reliance placed on the judgment rendered by the Hon'ble Apex Court in the case of S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Others³. Referring to the dictum, he would point out that the ratio laid down by the Apex Court in the above case are applicable only when provisions of Senior Citizens Act, 2007 are 2020 SCC Online SC 1023 misused to override the proceedings instituted under the D.V. Act, 2005.

11. He would further place reliance on the judgments rendered in the case of Ganesh and Ors. Vs. Sau. Nikita & Another⁴, Prabhakar Mohite vs. State of Maharashtra⁵, Namdeo Babaji Bangde vs. State of Maharashtra⁶ and Anil Kumar Dhiman vs. State of Haryana⁷ and would contend that the Delhi, Bombay and Haryana High Courts have clearly held that even if criminal cases are lodged by wife against in-laws, the eviction order passed under Senior Citizens Act, 2007 was upheld. He would further contend that Domestic Violence proceedings can be maintained only with respect to a shared household. Referring to the principles laid down by the (2021) SCC Online Bom 1290 2018 SCC Online Bom 2775 AIR 2022 Bom 151 AIR Online 2021 P&H 1036 Hon'ble Apex Court in the case of Satish Chander Ahuja vs. Sneha Gupta⁸, he would contend that a shared household has to be understood as a household where husband is entitled to reside. Referring to the title documents relating to residential house at Bengaluru, he would point out that son admittedly residing as a licensee, daughter-in-law would not have a better right and therefore, the proceedings initiated by the daughter-in-law under the provisions of D.V. Act, 2005 are not maintainable.

12. Learned Senior Counsel Sri. Jayakumar S.Patil, while countering the arguments advanced by the learned counsel appearing for the father, mother and daughters primarily raised objection in regard to the maintainability of Crl.P.No.5479/2020 and 4818/2020 seeking quashing of the proceedings

pending in Crl.Misc.No.120/2019 under the provisions (2021) 1 SCC 414 of D.V. Act, 2005. He would contend that the proceedings initiated under the D.V.Act, 2005 being basically civil in nature provides different civil remedies to aggrieved women and therefore, he would contend that the proceedings under DV Act, 2005 being quasi civil nature, the petitioners cannot invoke the provisions of Section 482 of Cr.P.C. and therefore, these petitions are not maintainable and are liable to be dismissed. He would point out that the Domestic Violence proceedings are not amenable to Section 482 proceedings.

13. To buttress his arguments, reliance is placed on the judgment rendered by the Madras High Court and also the ratio laid down by the Hon'ble Apex Court in the case of Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another⁹. Learned Senior Counsel while (2016) 11 SCC 774 bringing to the notice of this Court in regard to the interim arrangement made vide order dated 02.12.2021 would point out that the fact that a comprehensive partition suit is pending, neither the son nor the daughter-in-law can be evicted from the premises. While assailing the order of the Tribunal under Section 23 read with Section 5 of Senior Citizens Act, 2007 learned Senior Counsel would point out that there is no question of transfer of a property and therefore, the Tribunal has no jurisdiction to invoke the provisions of Senior Citizen Act, 2007 and pass the eviction order. The proceedings initiated by the father under the provisions of Senior Citizens Act admittedly does not pertain to grant of maintenance to senior citizens and there is no issue involved in regard to transfer of property and therefore, learned Senior Counsel would point out that petition filed by the father BalasahebPatil against his son seeking eviction under the provisions of Senior Citizens Act, 2007 is not maintainable. He would further point out that order of eviction cannot be enforced against daughter-in-law and minor children when admittedly they are not parties to the proceedings under Senior Citizens Act, 2007 and more particularly when a petition under D.V. Act, 2005 is pending consideration.

14. Learned Senior Counsel has further placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Prabha Tyagi vs. Kamlesh Devi¹⁰. Learned Senior Counsel would further contend that petition under Senior Citizens Act, 2007 is not maintainable when suit for partition is pending consideration before the competent civil Court. On these set of grounds, he would point out that the eviction order passed by the Tribunal in Misc.Petition 2022 SCC Online SC 607 No.69/2019 under Sections 5 and 23 of Senior Citizens Act, 2007 is not sustainable and therefore, the petitions filed by son Anilkumar in W.P.No.7470/2021 and writ petition filed by daughter- in-law and children in W.P.No.7539/2021 deserves to be allowed. He would further request this Court to dismiss the petitions filed under Section 482 filed in Crl.P.Nos.5479/2020 and 4818/2020.

15. Heard learned counsel appearing for the petitioners and learned Senior Counsel appearing for the respondents. I have given my anxious consideration to the material on record and the judgments produced by both the parties.

16. The present case revolves around a prime residential property located in Chandra Layout, Bengaluru. BalasahebPatil asserts that he applied for allotment of plot to the BDA while serving in the police department and subsequently, constructed a house out of his self earnings and service benefits. In view of son filing a partition suit and asserting that the present petition property is an

ancestral property, BalasahebPatil (father) filed a petition under Sections 5 and 23 of the Senior Citizens Act, 2007 seeking eviction order against his son Anilkumar. The Tribunal having recognized the need to protect the rights of BalasahebPatil who is a senior citizen has issued eviction order calling upon his son Anilkumar and his family members to vacate the premises.

17. The daughter-in-law alleging that she has a right to reside in the shared household has filed a petition under Sections 17, 18, 19 and 23 of the D.V. Act, 2005 alleging ill-treatment and domestic discord under the provisions of D.V. Act.

18. Having heard learned counsel on record and learned Senior Counsel appearing for the son and daughter-in-law, one of the primary issue that needs consideration at the hands of this Court is as to whether the proceedings under the D.V. Act, 2005 can be maintained when there is already an eviction order under the Senior Citizens Act, 2007. Another issue that has arisen for consideration is as to whether the father Balasaheb along with his children and his brother can maintain a petition under Section 482 challenging the domestic violence proceedings. This Court is also called upon to examine as to whether the protection and reliefs claimed by the daughter-in-law under the D.V.Act, 2005 can supersede the eviction order granted under the Senior Citizens Act, 2007.

19. The object of Domestic Violence Act:

The Domestic Violence Act aims to provide several remedies to an aggrieved women and protect them against any form of domestic violence as emphasized in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra). However, the primary object of D.V. Act, 2005 does not negate the rights and protection afforded to senior citizens under the Senior Citizens Act, 2007. The pleadings in the partition suit filed by son Anilkumar indicates that he and his wife (Sony-daughter-in-law) are asserting interest in the residential house at Bengaluru since its inception. Para 12 of the plaint would give an indication as to why this dispute has arisen between father and the son and the said pleadings would also enable this Court to assert whether son to overcome an eviction order under the provisions of Senior Citizens Act, 2007 has set up his wife to invoke the provisions of Domestic Violence Act. Para 12 of the plaint is extracted and the same reads as under:

"12. That, as promised by my parents and other family members there was a family arrangement to give the said house situated at Chandra Layout, Bengaluru to me for the preservation of peace, honour of the family and for the avoidance of the litigation and as a security to me, and my wife, later on to my children and with a purpose of establishing and ensuring amenities as good will amongst the relations with a condition that the said house shall continue as 'dwelling house' for me my family and my parents and the said family arrangement was arrived at the time of engagement held at the dwelling house, situated at Chandra Layout Bangalore, a couple of months before my marriage, in the presence of relatives of both the sides (bride & bridegroom). The said family arrangement is final and binding on the parties. That, my marriage with Sony @ Sonia was performed on 27-05-2011."

20. A cursory look at the above culled out paragraph clearly gives an indication that the marriage of Anilkumar with Sony was solemnized with an assurance that the prime residential property at Bengaluru would ultimately go to the son. The material placed on record *prima facie* demonstrates that father (BalasahebPatil) while he was serving as a Police officer applied for a site by submitting an application to the BDA and subsequently, constructed a house. Anilkumar's assertion that a family arrangement is already made prior to the marriage ensuring that the disputed residential house would be preserved for him, his wife Sony and their children and that this arrangement is made for preservation of peace and honour within the family and to avoid litigation further substantiates the father's assertion and claim that the residential house being his self acquired property is entitled for protection and there is a bitterness and acrimony between father and son and also daughter-in-law.

21. Both the parties have cited judgments in support of their contention. This Court has examined the precedents to address the issue raised in the captioned petitions. The ratio laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner(*supra*) has no application to the present case on hand. In the said case, son to resist wife's petition under the provisions of Domestic Violence Act gifted the property to his father and set up his father only to resist the right of a wife to claim right of the residence.

22. The Senior Citizens Act, 2007 provides for the eviction of children or relatives if necessary to ensure the dignity, peace, and maintenance of senior citizens. However, this provision must be harmonized with the D.V. Act,2005 which protects a woman's right to reside in her shared household, ensuring neither Act's provisions are unjustly negated, as highlighted in *Vanita v. Deputy Commissioner & Ors(supra)*. The interpretation of statutory provisions must align with the legislative objectives, as emphasized in *Skanda Sharath v. Assistant Commissioner (supra)*, to protect senior citizens' rights comprehensively. Eviction rules under the Senior Citizens Act, 2007, as noted in *Darshana vs. Govt. of NCT*¹¹, should include daughters-in-law to ensure broad protection for senior citizens. Cases such as *Sachin and another vs. Jhabbu Lal*¹² and *Anil Kumar Dhiman and another vs. State of Haryana and others*¹³ affirm that sons can reside in their father's self-acquired property only with the father's permission, irrespective of their marital status. Further, *Santosh Surendra Patil v. Surendra Narasgonda Patil and others*¹⁴ illustrates that tribunals can nullify property transfers to children who fail to maintain their parents, and *Manmohan Singh v. State of Union Territory, Chandigarh and AIR online 2018 DEL 2358 AIR 2017 DELHI 2017 Crwp.1357-2019 DD. 21.09.2021 Wp.1791/2016 DD 23.06.2017 Others*¹⁵ clarifies that sons living on their father's property as licensees must vacate upon notice of termination, underscoring that they do not have an inherent right to remain. Thus, these legal precedents collectively reinforce the Senior Citizens Act's objective to safeguard senior citizens' rights while balancing it with the protective measures under the D.V. Act, 2005.

23. The Senior Citizens Act, 2007 will prevail over all other Acts, ensuring the protection and well-being of senior citizens. As highlighted in various judgments, the Senior Citizens Act, 2007 allows for the eviction of children or relatives to safeguard the rights of senior citizens. The Court's interpretation consistently emphasizes the harmonious application of both the D.V. Act, 2005 and the Senior Citizens Act, CWP.1365 of 2015 2007, ensuring comprehensive protection for vulnerable

individuals within family dynamic

24. In the present case, there is no dispute between the son and his wife. Therefore, the daughter-in-law is not an aggrieved person under the D.V. Act, 2005. The son is residing as a licensee in his father's house, and the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law in this context. In the present case on hand, the facts are diagonally opposite to the facts in the case cited supra. In the present case on hand, this Court is concerned with father's need for the property to maintain himself and his wife and therefore, senior citizens right over the property holds significant weight especially, considering his retirement and financial needs. Moreover, the son's financial stability as evident by his engineering profession, diminishes the urgency for him to retain possession of the property. Therefore, this Court is of the view that daughter-in-law's invocation of D.V.Act, 2005 seemingly in collusion with her husband, to thwart eviction, lacks merit.

25. In the light of the principles laid down by the Hon'ble Apex Court in the above cited judgment, what emerges is that an aggrieved women is given protection under the provisions of D.V. Act, 2005. The primary object of D.V.Act, 2005, is to give protection to women against any form of domestic violence as outlined in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra).

26. In the present case on hand, the relationship between son and his wife Sony is cordial. The records also reveal that both have engaged a common counsel and are contesting the eviction order secured by BalasahebPatil under the provisions of Senior Citizens Act, 2007.

27. The Hon'ble Apex Court in the case of S.R.Batra vs. Taruna Batra¹⁶ while examining the definition of "shared household" in Section 2(s) of the D.V. Act, 2005 together with the sweep of Section 17 construed that aggrieved wife can claim any household as shared household where she is living or at any point of time lived together with her husband. But it is against all cannons of law that there will be encroachment on the proprietary interest of a third party in the property owned by him/her simply because the aggrieved wife had occasion to live and occupy that property either jointly or singly. Without declaring Section 2(s) as ultra vires, it has been held by the Hon'ble Apex Court that the true meaning of the above provision is that any household in which the (2007) 3 SCC 169 aggrieved wife's husband has a right, title and interest and the wife's right of residence on the ground that there is an ill-treatment is not absolute.

28. If the choice is between two statutes and warrants interpretation, the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

29. From the records what emerges is that daughter-in-law has not placed any material to substantiate that she is an aggrieved person as defined under Section 2(a) of the D.V. Act, 2005. The daughter-in-law also cannot seek protection and assert her right to reside in the disputed residential house by taking benefit of proviso to definition 2(q) of the D.V.Act, 2005.

30. This Court has carefully examined the provisions of both the Acts. In the present set of facts, this Court is more than satisfied that Senior Citizens Act, 2007 has an overriding effect as per Section 3. This Section gives Senior Citizens Act, 2007 a precedent over other inconsistent laws allowing senior citizens to seek eviction of their children or relative, if necessary. The Tribunal's authority to order eviction under Senior Citizens Act, 2007 is further supported by the dictum laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner (*supra*), which clearly underscores the Senior Citizens Act, 2007 broad protective measures for senior citizens.

31. In the light of statutory framework and judicial precedents, this Court is inclined to uphold the eviction order issued by the Senior Citizens Tribunal. The relief sought under the D.V. Act, 2005 by daughter-in-law (Sony) cannot supersede the eviction order as the Senior Citizens Act, 2007 has an overriding statutory authority in the present set of facts. The right created in favour of aggrieved person under the provisions of D.V. Act, 2005 is not an absolute right. The overall facts and circumstances in the present case on hand speaks in volume against the son and daughter-in-law. The son has clearly set up his wife. This Court is more than satisfied that daughter-in-law's invocation of D.V. Act, 2005, seemingly in collusion with her husband and the challenge to the eviction order passed by the Senior Citizens Tribunal by the daughter-in-law on the premise that her petition filed under Sections 17, 18, 19 and 23 of D.V. Act, 2005 is pending consideration is also misconceived.

32. This Court is also more than satisfied that the parties to the proceedings are affluent and are financially sound. Son is a qualified engineer and has sufficient income to support himself and his wife. The effect of playing fraud upon the Court has been considered by the Hon'ble Apex Court in the case of S.P.Chengalvaraya vs. Jagannath¹⁷. The Hon'ble Apex Court observed that "the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court". The Hon'ble Apex Court in the above cited judgment held that in such cases where false cases are filed, the discretion vests with the Court to summarily throw out such person at any stage of the litigation.

AIR 1994 SC 853 Regarding maintainability of 482 petitions seeking quashing of proceedings pending under the provisions of Domestic Violence Act:

33. The present case revolves around the contentious issue of whether petitions filed under Section 482 of the Criminal Procedure Code (Cr.P.C.), seeking to quash proceedings under the D.V. Act, 2005, are maintainable. The respondents, specifically the son and daughter-in-law, have vehemently contested the maintainability of these petitions. Their counsel relies heavily on the Supreme Court's decision in Shyamla Devda and Others vs. Parimala¹⁸, arguing that the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya¹⁹, which supports the respondents' position, was incorrectly deemed per incuriam. According to them, various High Courts, including Bombay, have consistently upheld (2020) 3 SCC 14 (2022) SCC Online Mad 5435 the maintainability of Section 482 petitions against D.V. Act, 2005 proceedings.

34. In considering the arguments presented, this Court has given careful consideration to the facts and legal principles at hand. It finds that the Supreme Court's decision in Shyamlal Devda(supra) primarily focused on a different aspect of law and did not directly address the issue of maintainability of Section 482 petitions challenging proceedings under the D.V. Act, 2005. Hence, reliance placed on Shyamlal Devda(supra) by the respondents' counsel regarding the inapplicability of the Madras High Court's judgment is not persuasive.

35. Contrary to the respondents' contention, the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya(supra) analyzed the specific provisions and nature of relief sought under the D.V. Act, 2005 comprehensively. It concluded that while Sections 17 to 23 of the Act provide civil remedies to aggrieved parties, any challenge to these proceedings should be through a writ petition under Article 227, limited to cases of patent lack of jurisdiction by the lower courts. This interpretation underscores the quasi-civil nature of the remedies provided under the Act.

36. The D.V.Act, 2005 represents a significant legislative effort to address domestic abuse comprehensively, going beyond traditional criminal remedies like Section 498A of the Indian Penal Code (IPC). It aims to empower Courts to issue various civil orders, including protection orders and monetary reliefs, which are distinct from criminal sanctions under the Act.

37. Sections 12, 18, 19, 20, 21, 22, and 23 of the D.V.Act, 2005 delineate these civil remedies, emphasizing the Act's intent to provide relief and protection to victims within domestic relationships. This statutory framework supplements existing laws without derogating from their provisions, as explicitly stated under Section 36 of the Act.

38. Therefore, considering the legislative intent and the specific provisions of the D.V. Act,2005, this Court finds that petitions filed under Section 482 challenging proceedings under the Act are not maintainable. Such challenges would be more appropriately addressed through a writ petition under Article 227, limited to cases where there is a clear lack of jurisdiction by the lower courts.

39. Conclusion:

(a) In light of the presented facts and relevant legal precedents, it is evident that the Senior Citizens Act, 2007 and the D.V.Act, 2005 must be harmoniously interpreted to ensure that neither Act's provisions are unjustly negated. This case involves the application of the Senior Citizens Act, 2007 to protect the rights and welfare of senior citizens, specifically the father's right to use his property for his maintenance and that of his wife.

(b) Relevance of Provisions and Precedents:
The Senior Citizens Act, 2007 is primarily

designed to protect the rights and dignity of senior citizens, ensuring they can live a peaceful and secure life. The Act empowers tribunals to order the eviction of children

or relatives who fail to maintain their parents. This protection is paramount, particularly in cases where the senior citizen's right to maintenance and peaceful living is at stake, as emphasized in *Aditya Gupta v. Narendra Gupta* (supra) and *Manmohan Singh v. UT Chandigarh*(supra).

The D.V. Act, 2005, on the other hand, is designed to protect women from abuse and harassment within domestic relationships, allowing them to seek various civil remedies. In *Vanita v. Deputy Commissioner & Ors*²⁰, the Court underscored the importance of ensuring that a woman's right to reside in her shared household is not unjustly compromised by the provisions of the SCA.

(c) Distinguishing Principles from Vanita Case:

In *Vanita v. Deputy Commissioner & Ors.* (supra), the son had transferred property to his father to avoid proceedings initiated by his wife under the D.V. Act, 2005. The Court held that the Senior Citizens Act, 2007 and D.V. Act, 2005 must be interpreted harmoniously, ensuring that the woman's AIR Online 2020 SC 897 right to reside in the shared household is not undermined.

(d) In the present case, there is no dispute between the son and his wife, indicating that the daughter-in-law is not an aggrieved person under the D.V.Act, 2005. The son's attempt to nullify the eviction order passed by the tribunal under the Senior Citizens Act, 2007 by having his wife initiate proceedings under the D.V. Act, 2005 is an apparent misuse of the Act's provisions. The son is residing as a licensee in his father's house, and therefore, the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law to challenge the eviction order.

(e) The Court must consider that the Senior Citizens Act, 2007 objective is to protect senior citizens' rights, including their right to maintenance and peaceful living. The son's financial stability and professional standing, as an engineer employed in a private company, further emphasize the necessity for the father to utilize his property for his and his wife's sustenance.

(f) The Court's interpretation consistently emphasizes the harmonious application of both the D.V.Act, 2005 and the Senior Citizens Act, 2007, ensuring comprehensive protection for vulnerable individuals within family dynamics. In the present case, the provisions of the Senior Citizens Act, 2007 will prevail, ensuring the protection and well-being of senior citizens. The father's right to use his property for his maintenance and that of his wife is paramount, and the son's attempt to use the D.V. Act, 2005 to nullify the eviction order is not permissible. The son, residing as a licensee, must vacate the property to ensure the father's right to peaceful living and maintenance is upheld.

(g) A petition filed under Section 482 of the CrPC to challenge the proceedings initiated under the D.V. Act, 2005 is not maintainable, as established in the case of

Arun Daniel &Ors. v. Suganya(supra).

The Court in this case clarified that the reliefs granted under Sections 17-23 of the D.V.Act, 2005 are civil in nature, designed to protect women from domestic violence by providing various civil remedies. These include residence orders, protection orders, and monetary reliefs. If there is a breach of these orders, it can be addressed under Section 31 of the D.V. Act, 2005 which prescribes penalties for such violations.

(h) The use of Section 482 of the CrPC, which allows the High Court to exercise its inherent powers to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, is not appropriate for challenging the merits of D.V.Act, 2005 proceedings. Instead, the remedy lies in filing a writ petition under Article 227 of the Constitution. Article 227 gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This provision can be invoked to challenge D.V. Act, 2005, proceedings only on the grounds of a patent lack of jurisdiction or a manifest error in the exercise of jurisdiction.

(i) In essence, the distinction lies in the nature of the relief sought and the appropriate legal remedy available. Section 482 of the CrPC is meant for addressing the abuse of Court processes and cannot be used to question the civil nature of D.V. Act, 2005 orders. The proper recourse is a writ petition under Article 227, ensuring that challenges to D.V. Act proceedings are based on jurisdictional grounds rather than substantive disputes over the orders themselves. This ensures a clear and orderly process for addressing grievances related to the D.V. Act, 2005 maintaining the integrity of both the Act and the judicial process.

40. In light of the statutory framework and judicial precedents, this Court upholds the eviction order issued by the Senior Citizen Tribunal. The reliefs sought under the D.V. Act, 2007 by daughter-in-law will not supersede the eviction order, as the Senior Citizens Act, 2007 has overriding statutory authority.

41. The Court dismisses WP No. 7470/2021 and WP No. 7539/2021, confirming the validity of the eviction order dated March 30, 2021. The temporary status quo orders granted in April 2021 were vacated, and Anil Kumar and his family are directed to vacate the premises within 30 days from the date of this judgment. Failure to comply with this directive would result in appropriate legal consequences. For the foregoing reasons this Court passes the following order:

ORDER

(i) WP No. 7470/2021 is dismissed.

(ii) WP No. 7539/2021 is dismissed.

(iii) The eviction order dated March 30, 2021, passed by the Senior Citizen Tribunal, is upheld.

(iv) The 482 petitions in Crl.P.No.4818/2020 and Crl.P.No.5479/2020 are dismissed as not maintainable: A writ under Article 227 is only maintainable in cases of patent lack of jurisdiction.

(v) Anil Kumar (petitioner in
W.P.No.7470/2021 and his wife and
children (petitioners in

W.P.No.7539/2021) are hereby directed to vacate the premises within 30 days from the date of this judgment.

Sd/-

JUDGE CA

Smt Sumitra W/O Shivanand ... vs Smt Poornima W/O Kiran ... on 23 July, 2024

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NC: 2024:KHC-D:10387
CRL.P No. 100560 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 23RD DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE VENKATESH NAIK T
CRIMINAL PETITION NO. 100560 OF 2024

BETWEEN:

1. SMT. SUMITRA
W/O. SHIVANAND SANNALINGANNAVAR,
AGE. 58 YEARS,
OCC. ANGANGWADI TEACHER,
R/O. H. NO. 187/3, PLOT NO.11,
VIVEKANAND NAGAR,
GOKAK, TQ. GOKAK,
DIST. BELAGAVI, PIN-591307.

2. GEETA
W/O. MAHESH MANWADI,
AGE. 44 YEARS,
OCC. HOUSEHOLD WORK,
R/O. VIJAY DATTA APARTMENT,
FLAT NO.104, 2ND FLOOR,
NEAR VIJAYA HOTEL,
VIJAYNAGAR, HUBBALLI,
PIN-580002.

Digitally signed
by MANJANNA
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Location: HIGH
COURT OF
KARNATAKA

3. MAHESH MANWADI,
AGE. 46 YEARS,
OCC. BUSINESS,
R/O. VIJAY DATTA APARTMENT,
FLAT NO.104, 2ND FLOOR,
NEAR VIJAYA HOTEL,

VIJAYNAGAR,
HUBBALLI-580002.

...PETITIONERS
(BY SRI. SATISH S. RAICHUR, ADVOCATE)

AND:

SMT POORNIMA
W/O. KIRAN SANNALINGANNAVAR,
AGE. 34 YEARS,
OCC. HOUSEHOLD,
NOW PVT. SERVICE,
R/O. C/O. TAYI KRUPA,
ANNADANI PATIL,
4TH CROSS, KALYAN NAGAR,
DHARWAD, PIN-580007.

...RESPONDENT
(PARTY IN PERSON)

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
SEEKING TO CALL FOR RECORDS AND TO QUASH THE COMPLAINT
FILED BY THE COMPLAINANT/RESPONDENT IN CRL.MISC. NO.
214/2022 AGAINST THE PETITIONERS FOR OFFENCES P/U/SEC. 12,
18, SEC. 19 SEC. 20 AND SEC. 22 OF PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT 2005 PENDING ON THE FILE III ADDL.
SENIOR CIVIL JUDGE AND CJM, DHARWAD AND QUASH THE
SUMMONS ISSUED UNDER SEC. 61 OF CR.P.C. DATED 03.11.2022
BY ALLOWING THIS PETITION.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:10387
CRL.P No. 100560 of 2024

ORDER

Heard learned counsel for petitioners and respondent- party in person.

2. Petitioners have filed this petition under section 482 of the Criminal Procedure Code (for short, 'the Cr.P.C') to quash the complaint filed by the respondent in Crl.Misc.No.214/2022 against the petitioners under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') for the reliefs under Sections 18, 19, 20 and 22 of the Act pending on the file of III Additional Senior Civil Judge and CJM, Dharwad, and to quash the summons issued under Section 61 of the Cr.P.C dated 03.11.2022.

3. For the sake of convenience, the parties are referred to as per their rank referred to in the criminal miscellaneous petition. Petitioner Nos.1 to 3 are respondent Nos.2 to 4 and respondent-party in person is petitioner before the trial Court.

NC: 2024:KHC-D:10387

4. Brief facts of the case of respondent before the trial Court is as under:

The respondent has filed complaint before the trial Court under Section 12 of the Act and also sought various reliefs under the Act, wherein, she has taken contention that, she is legally wedded wife of accused No.1-Kiran and their marriage solemnised on 17.04.2019 at Gokak, as per the customs prevailed in their community. The relationship of respondent with her husband was cordial for a couple of months. Thereafter, accused No.1 and present petitioners started to harass the respondent, on account of demand of dowry.

5. It is further case of the respondent that, on 01.10.2019, accused No.1 made a phone call to respondent and asked her to check whether his purse is found at home, at that time, she found a purse, wherein, she saw a original voter ID pertains to one Ashwini W/o Kiran Sannalingannavar. Thus, respondent enquired with accused NC: 2024:KHC-D:10387 No.1 as to whereabouts of said Ashwini. But accused No.1 did not given satisfactory answer and he told her that she has been working as a clerk in Marata Mandal School, Belagavi and he is trying to get government job on mercy basis to her, but later, the respondent came to know that accused No.1 performed his marriage with Ashwini on 05.02.2009 and the marriage was registered on 21.02.2009 before sub-registrar, later accused No.1 and Ashwini filed divorce petition in M.C.No.14/2020 and same was disposed on 17.03.2020. In spite of disposal of divorce petition, respondent came to know that accused No.1 continued his affair with Ashwini, but they suppressed this fact before respondent and in consequence thereof, accused No.1 and these petitioners started torturing respondent and threatened not to ask anything about the first marriage of accused No.1. Therefore, the respondent called her parents to ask about the first marriage of accused No.1. However, the accused persons did not explain anything about first marriage. Therefore, the NC: 2024:KHC-D:10387 parents of the respondent took her to their home. Thereafter, accused No.1 neglected respondent, torturing her and also not provided basic amenities to her. Hence, she lodged a complaint under Section 12 of the Act before the Trial Court against accused Nos.1 to 4.

6. On 03.11.2022, the trial Court issued notice to accused No.1 and present petitioners and call for D.I.R from CDPO. Aggrieved by the said order, petitioners/accused Nos.2 to 4 have filed this petition to quash the order dated 03.11.2022 and contended that the trial Court without application of mind has issued notice to the petitioners and accused No.1.

7. Sri.Satish S. Raichur, learned counsel for the petitioners would contended that, the plain reading of the complaint and statement of complainant in form No.II, it appears that there are no specific allegations made against the petitioners. Hence, the proceeding before the trial Court is liable to be quashed. Further, the complainant-

NC: 2024:KHC-D:10387 respondent has not made any specific allegation against accused Nos.3 and 4. Further, they are residing at Hubballi and not residing in shared hold house. Merely they are relatives of the husband of complainant and hence, no complaint under Section 2 of the Act is maintainable.

8. Further the trial Court has not applied its mind while issuing summons to the petitioners under Section 61 of the Cr.P.C. The trial Court has not passed any reasoned order, while issuing of summons to the petitioners. Petitioner No.1 is mother-in-law of respondent, petitioner Nos.2 and 3 are the cousins, married sister and brother-in- law of accused No.1 and hence, no relief is sought against the petitioners and the relief sought for protection from domestic violence is not maintainable against these petitioners as accused Nos.3 and 4 are not residing along with the husband. Hence, the complaint insofar as accused Nos. 3 and 4 are not maintainable. Thus, prayed to allow the petition.

NC: 2024:KHC-D:10387

9. The respondent party-in-person has contended that since accused Nos.1 to 4 harassed her in connection with the marriage of accused No.1 with one Ashwini, they evicted the respondent from matrimonial house and also not provided food, shelter etc and hence, she filed a complaint under Section 12 of the Act against her husband and in-laws.

10. Perused the materials available on record. The petitioners have taken contention that Section 2 of the Act is not applicable to them, as they are residing at Hubballi. Section 2(g) defines Domestic violence, which has the same meaning as assigned to it in Section 3. Section 3 defines that the Domestic violence which is as under:

3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
NC: 2024:KHC-D:10387

- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes--
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;
- (iv) "economic abuse" includes--
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not

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NC: 2024:KHC-D:10387 limited 5 to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by

the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

11. Perusal of the aforesaid preposition of law, it appears that the respondent has made specific allegation against accused Nos.1 and 2 alleging that, after the marriage, accused Nos.1 and 2 were residing with the respondent/party-in-person. Since, she started enquiry about one Ashwini, accused No.1 started to harass the

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NC: 2024:KHC-D:10387 respondent on the instigation of other accused persons. From perusal of the cause title of the petition as well as the complaint, accused Nos.3 and 4 are not residing with accused Nos.1 and 2, in a share house.

12. As per the contents of complaint *prima facie*, there is material against accused Nos.1 and 2 to proceed under Domestic Violence Act. However, there are some omnibus and general allegations against accused Nos.3 and 4 and there is no specific allegation made against accused Nos.3 and 4 as to how and in what manner they subjected complainant/respondent to cruelty, both mentally and physically and also they subjected the respondent to domestic violence.

13. In the absence of any material that accused Nos.3 and 4 have subjected the complainant to cruelty both mentally and physically and also subjected her to domestic violence, the cognizance taken by learned Magistrate for the aforesaid offences and issue of process against accused

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NC: 2024:KHC-D:10387 Nos.3 and 4 is without any substance. Further, the trial Court without perusing and satisfying under Section 61 of the Cr.P.C., issued process.

14. In view of the proceedings analysis, continuation of criminal proceedings as against accused Nos.3 and 4 will be an abuse of process of law. However, there is a *prima facie* material against accused Nos.1 and

2. Hence, I proceed to pass the following:

ORDER i. Petition is allowed in part.

ii. Impugned proceedings in Crl.Misc.No.214/2024 pending on the file of III Additional Senior Civil Judge and CJM, Dharwad, insofar as it relates to petitioner No.2 and 3/accused Nos.3 and 4 are hereby quashed.

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NC: 2024:KHC-D:10387 iii. The observations made in this order do not come in the way of trial Court while disposing the matter pending before it. iv. All contentions are left open.

Sd/-

JUDGE AC/ct-an

Smt. Sunita @ Savita W/O Kalyanrao ... vs Kalyanrao S/O Shivaraya Belamagi on 7 August, 2024

Author: K Natarajan

Bench: K Natarajan

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NC: 2024:KHC-K:5773
CRL.RP No. 200012 of 2022

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL REVISION PETITION NO.200012 OF 2022 (397)
BETWEEN:

SMT. SUNITA @ SAVITA
W/O KALYANRAO BELAMAGI,
AGE: 45 YEARS,
OCC: HOUSEHOLD,
R/O DEVI NAGAR, QUADRI CHOWK,
ALAND ROAD, KALABURAGI
NOW AT R/O MANGALAGI, TQ. CHITTAPUR,
DIST. KALABURAGI-585211.

...PETITIONER

(BY SRI. M. S. ASTAGI, AND
SRI. M. M. WADI, ADVOCATES)

AND:

Digitally signed KALYANRAO S/O SHIVARAYA BELAMAGI
by KHAJAAMEEN AGE: 58 YEARS, OCC: BUSINESS,
L MALAGHAN R/O H.NO. 9-587/16/1, DEVI NAGAR,

Location: High
Court Of
Karnataka

QUADRI CHOWK, ALAND ROAD,
KALABURAGI-585103.

...RESPONDENT

(BY SRI. ASHOK B. MULAGE, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 OF CR.P.C., PRAYING TO ALLOW THE REVISION PETITION AND BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER PASSED IN CRL. APPEAL NO.33/2021, DATED 07.01.2022 BY THE LEARNED III ADDL. DIST. AND SESSIONS JUDGE, KALABURAGI BY UPHOLDING THE ORDER PASSED BY TRIAL COURT IN CRL.MISC.NO.788/2014, ORDER DATED 30.09.2019.

THIS PETITION, COMING ON FOR ADMISSION THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

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NC: 2024:KHC-K:5773
CRL.RP No. 200012 of 2022

CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN) This revision petition is filed by the petitioner under Section 397 of Cr.P.C., for setting aside the judgment and order passed by the III-Addl. Dist. & Sessions Judge, Kalaburagi (for short, hereinafter referred to as 'the First Appellate Court') in Crl. Appeal No.33/2021 dated 07.01.2022 by allowing the appeal filed by the respondent under Section 29 of Protection of Women From Domestic Violence Act, 2005 (for short, hereinafter referred to as 'the D.V.Act') and having dismissed the petition of the petitioner filed under Section 12(1) of the D.V.Act filed before the Magistrate.

2. Heard learned counsel for the petitioner and the learned counsel for the respondent.
3. The case of the petitioner before the Magistrate is that she has filed petition under Section 12 of the D.V.Act, for claiming maintenance as against respondent NC: 2024:KHC-K:5773 Nos.1 and 2 (respondent No.2 subsequently died) alleging that she has married to respondent No.1 and out of their marriage two children were born and respondent not maintained the petitioner and children and he has ill-treated her. Hence, she has filed complaint to the Mahila Police Station in Crime No.27/2007. A complaint has been registered and charge-sheet has been filed. Hence, prayed for Rs.5,00,000/- to each petitioner from respondent No.1 and Rs.2,00,000/- to each petitioner from respondent No.2 as compensation.
4. The respondents appeared and resisted the petition by filing objections and denying relationship.
5. In order to prove her case, the petitioner herself got examined as PW.1 and got marked Ex.P1 and on behalf of respondents, respondent No.1 examined as RW.1 and got marked Exs.D1 to D10.
6. After hearing both the parties, the Magistrate partly allowed the petition and ordered Rs.1,500/- per NC: 2024:KHC-K:5773 month to the petitioner from the date of petition vide order dated 21.06.2017. Being aggrieved by the order, the respondent filed appeal before the Dist. & Sessions

Judge in Crl. Appeal No.50/2017 and the Sessions Judge remanded the matter back for fresh consideration. Accordingly, once again the matter was taken up by the Magistrate in Crl.Misc.No.788/2014 and disposed of the matter on 30.09.2019 by granting Rs.1,00,000/- as lumpsum compensation to the petitioner. The same was challenged by the respondent by filing the appeal before the First Appellate Court in Crl.A.No.33/2021. After hearing the arguments, the First Appellate Court vide judgment dated 07.01.2022 allowed the appeal and dismissed the petition filed by the petitioner. Being aggrieved with the same, the petitioner is before this Court.

7. The learned counsel for the petitioner has contended that the First Appellate Court committed an error in disbelieving the evidence of the petitioner even NC: 2024:KHC-K:5773 though the Magistrate has considered the evidence on record rightly held that there was domestic violence and she is entitled for the compensation. But the First Appellate Court reverse the same and also contended that the respondent was paying maintenance to the children and subsequently, the daughter became attain majority and he is paying maintenance to the son. He has challenged before the High Court by filing RPFC against granting maintenance by the Family Court, Kalaburagi, which was dismissed by the High Court. When such being the case, prayed for setting aside the order of the First Appellate Court to confirm the order of the Magistrate.

8. Per contra, the learned counsel for the respondent has resisted the petition and contended that the petitioner already filed a petition under Section 125 of Cr.P.C. before the Family Court and the Family Court rejected the claim for granting maintenance as she is not legally wedded wife of the respondent. The respondent denied the relationship with the petitioner. She is already NC: 2024:KHC-K:5773 married one Sharanappa, her previous marriage was un-subsistence and even remarriage with the respondent is void marriage. He has further contended that respondent was already married one Jagadevi and having daughter, his marriage was held in the year 1994 which was registered marriage, such being the case, marring this petitioner does not arise. Even the High Court has confirmed the relationship of the respondent with the petitioner is illegal in the RPFC. Such being the case granting maintenance or compensation to the petitioner does not arise. Hence, prayed for dismissing the petition and confirmed the order passed by the First Appellate Court.

9. Having heard the arguments and perused the records, which reveals the petitioner filed petition under Section 12 of the D.V.Act for claiming compensation in Crl.Misc.No.788/2014 and the Magistrate has granted Rs.1,500/- as maintenance, which was set aside by the First Appellate Court in Crl.Appeal.No.50/2017.

NC: 2024:KHC-K:5773 Thereafter, matter was taken by the Magistrate once again and the petitioner not led any additional evidence, except the Ex.P1/FIR registered against the respondent. It is an admitted fact the FIR and charge-sheet filed against the respondent was ended in acquittal that was attained finality.

10. It is also admitted fact that the petitioner already filed 125 of Cr.P.C. for granting maintenance to herself and the children before the Family Court, Kalaburagi in Crl.Misc.No.56/2007, wherein the Family Court allowed the petition in part by rejecting the prayer for granting maintenance to her on the ground that she was already married woman, the respondent also married person, their

marriage is illegal, therefore, she is not entitled for any maintenance. However, the Family Court granted maintenance of Rs.3,000/- to the daughter/Bhagyashree and the respondent approached the High Court by filing the RPFC No.534/2010. The High Court after considering the petition, dismissed the petition NC: 2024:KHC-K:5773 on 11.11.2014. However, the co-ordinate bench of this Court has categorically held that Family Court while answering the point No.1 has held the marriage between the respondent (petitioner herein) with one Sharanappa and marriage of the petitioner with respondent herein was illegal and she is not entitled for maintenance from the petitioner. For further clarification the order of this Court referred as under:

"5. The Family Court, while answering point no.1 has held that respondent's mother having married the petitioner during subsistence of her marriage with one Sharanappa, her marriage with the petitioner was illegal as such, she is not entitled for the maintenance from the petitioner and has held that the respondent was born to the petitioner and has awarded maintenance to her."

11. While this Court dismissed the petition of the respondent holding that granting maintenance to the daughter has been upheld. However, the present NC: 2024:KHC-K:5773 petitioner not challenged the order of rejecting the maintenance on the ground that the marriage is illegal and her marriage was void marriage during the subsistence of previous marriage with Sharanappa and the marriage with the respondent is illegal. The finding of the Family Court has been attained finality in the High Court, which was not challenged before the Apex Court.

12. Considering the same, I am of the view that the when the petitioner being the aggrieved person against the order of rejecting the maintenance by holding she is not a legally wedded wife of the respondent and which was attained finality. Such being the case, the said order was placed before the First Appellate Court and the First Appellate Court after considering the evidence on record, it is noted that there is no documents produced by the petitioner for marriage between the respondent and petitioner and also no other witnesses have been examined before the Court to show marriage between

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NC: 2024:KHC-K:5773 them was legal marriage and she is a legally wedded wife of the respondent.

13. This also submitted by the respondent counsel he has already paying the maintenance to the son and daughter. However, he has already filed a civil case for declaring that children are not legitimate children or belongs to him and his age is above more than 76 years that is matter should be decided by the Civil Court. However, the First Appellate Court while considering the appeal relied upon the judgment of the Hon'ble Apex Court in the case of Smt. Indra Sarma vs. V.K.V. Sarma reported in (2013) 15 SCC 755 where the Hon'ble Apex Court at para-68 to 70 as under:

"68. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships

in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it

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NC: 2024:KHC-K:5773 has not inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship"

under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

69. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in-relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the parliament, through proper legislation.

70. We are conscious of the fact that if any direction is given to the respondent to pay maintenance or monetary consideration to the

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NC: 2024:KHC-K:5773 appellant, that would be at the cost of the legally wedded wife and children of the respondent. especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort."

14. The Hon'ble Apex Court has held that when the relationship between the parties are not proved as per Section 2(f) of the D.V.Act and the domestic violence under Section 3 of the D.V.Act, and finally taken the contention of the husband in the case and appeal of the wife was dismissed. Based upon the judgment of the First Appellate Court, allowed the appeal and set aside the order of granting compensation.

15. When the petitioner failed to prove the domestic relationship as per Section 2(f) of the D.V.Act and also failed to prove the domestic violence in view of the Section 3 of the D.V.Act the question of granting any maintenance or compensation to the petitioner does not arise. Therefore, I am of the view that the First Appellate

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NC: 2024:KHC-K:5773 Court after considering the evidence on record as well as the contention of the respondent was already married one Jagadevi having daughter and he is living with his wife and relationship of the petitioner is not able to prove by the petitioner by oral as well as documentary evidence, when such being the case, granting maintenance by the Magistrate is not correct. Therefore, the First Appellate Court after re-appreciating the evidence on record, has rightly allowed the appeal and dismissed the petition filed by the petitioner.

16. Accordingly, this Court does not find any error in interfering with the order passed by the First Appellate Court. Accordingly, revision petition is devoid of merits and liable to be dismissed.

17. Accordingly, revision petition is hereby dismissed.

Sd/-

(K NATARAJAN) JUDGE SDU

Sri Aithappa Poojary vs The Protection Officer on 16 July, 2024

Author: Hemant Chandangoudar

Bench: Hemant Chandangoudar

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NC: 2024:KHC:27768
WP No. 15997 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 16TH DAY OF JULY, 2024
BEFORE
THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDETAR
WRIT PETITION NO. 15997 OF 2017 (GM-RES)
BETWEEN:

1. SRI AITHAPPA POOJARY
SON OF SRI KANTHAPPA POOJARY
AGED ABOUT 62 YEARS
RESIDENT OF CAUVERY NILAYA
CHECKPOST, VAMANJURU
MANGALURU.
2. SMT KALYANI
W/O SRI AITHAPPA POOJARY
AGED ABOUT 56 YEARS
RESIDENT OF CAUVERY NILAYA
CHECKPOST, VAMANJURU
MANGALURU.
3. SRI GIRISH
SON OF SRI AITHAPPA POOJARY
AGED ABOUT 35 YEARS
RESIDENT OF CAUVERY NILAYA
CHECKPOST, VAMANJURU
MANGALURU.
4. SMT SHOBHA
WIFE OF SRI GIRISH POOJARY
AGED ABOUT 33 YEARS
RESIDENT OF CAUVERY NILAYA
CHECKPOST, VAMANJURU
MANGALURU.
5. SRI JAGADEESH
SON OF SRI AITHAPPA POOJARY

Digitally signed by
R HEMALATHA
Location: HIGH
COURT OF
KARNATAKA

AGED ABOUT 33 YEARS
RESIDENT OF CAUVERY NILAYA
CHECKPOST, VAMANJURU
MANGALURU.

...PETITIONERS

(BY SRI. SUYOG HERELE E., ADVOCATE)

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NC: 2024:KHC:27768
WP No. 15997 of 2017

AND:

1. THE PROTECTION OFFICER
UNDER THE DOMESTIC VIOLENCE ACT
MANGALURU (URBAN) AND OFFICE OF THE
CHILD DEVELOPMENT PROJECT OFFICER
MANGALURU URBAN, SILVA CROSS ROAD
VELENTIA, BISHOP VICTOR CROSS ROAD
MANGALURU-575 002.
2. THE STATION HOUSE OFFICER
PANDESHWARA POLICE STATION
MANGALURU.
3. SMT LALITHA
DO OF SRI APPANNA
AGED ABOUT 30 YEARS
SANGAM HOUSE, NO.14-993
SHAKTHNAGAR CROSS
PADAVU, KUSHEKAR
MANGALURU-575 005.

...RESPONDENTS

(BY SMT. M V ADITHI, AGA FOR R1 & R2;
SRI. K GOVINDARAJ, ADVOCATE FOR R3)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH OF
NOTICES DTD.3.4.2017 ISSUED BY THE R-1 WITH REGARD TO
THE COMPLAINT LODGED BY THE R-2 VIDE ANNEX-A, A1, A2,
A3 AND A4 RESPECTIVELY AND ALL FURTHER PROCEEDINGS
PURSUANT THERETO.

THIS PETITION, COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE
FOLLOWING:

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NC: 2024:KHC:27768
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ORDER

Respondent No.3 filed a complaint before respondent No.1, alleging domestic violence against the petitioners herein. In response, the 1st respondent issued an impugned notice, calling upon the petitioners to participate in the enquiry. Taking exception to this notice, the petitioners have filed this petition.

2. The learned counsel for the petitioners argues that the duties of the 1st respondent are enumerated in Section 9 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act'). According to the learned counsel, there is no provision in the Act that authorizes the 1st respondent to issue a notice to the petitioners to participate in an enquiry to determine the veracity of the allegations made in the complaint. Therefore, the impugned notice issued by the 1st respondent lacks legal authority and is not sustainable in law.

3. In contrast, the learned counsel for respondent No.1 contends that to ascertain the participation and involvement of the petitioners in the allegations made in the complaint, the 1st respondent submitted a report to the jurisdictional court. The impugned notice was issued under the authority granted by Section 9 of the Act, and hence, it cannot be said to lack legal authority.

4. The arguments presented by the learned counsel for both parties have been duly examined.

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5. Section 9 of the Act, 2005 outlines the duties and functions of Protection Officers, which include assisting the Magistrate in discharging functions under the Act, making a domestic incident report to the Magistrate, and forwarding copies to the relevant police station and service providers. The Protection Officer is also responsible for making applications to the Magistrate for protection orders, ensuring legal aid for the aggrieved person, maintaining a list of service providers, arranging safe shelter homes, facilitating medical examinations, and ensuring compliance with monetary relief orders under Section 20 of the Act. The Protection Officer operates under the control and supervision of the Magistrate and performs duties as prescribed by the Magistrate and the Government.

6. Section 12 of the Act allows an aggrieved person, a Protection Officer, or any other person on behalf of the aggrieved person to present an application to the Magistrate seeking one or more reliefs under the Act.

7. Importantly, there is no provision in Section 9 of the Act that empowers the Protection Officer to issue a notice to the petitioners to participate in an enquiry specifically to verify the allegations made in a complaint filed by respondent No.3. The duties outlined in Section 9 do not include the authority to summon individuals for such enquiries.

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8. In the absence of specific provisions within the Act that authorize the 1st respondent to issue such a notice, the impugned notice calling upon the petitioners to participate in the enquiry lacks legal authority. Consequently, the notice is not legally sustainable. The Protection Officer's role is primarily to assist the Magistrate and ensure that the appropriate legal processes are followed, rather than to conduct independent enquiries into the veracity of complaints. Therefore, the actions of the 1st respondent in issuing the impugned notice exceed the statutory authority granted under the Act.

Accordingly, the writ petition is allowed.

The impugned notice dated 3.4.2017 issued by the 1st respondent at annexure-A1 to A4 stands quashed.

Sd/-

JUDGE HR

Sri Alok Kumar vs Smt Mamatha Singh on 6 August, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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Reserved on : 25.07.2024
Pronounced on : 06.08.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.28964 OF 2023 (GM - RES)

BETWEEN:

SRI ALOK KUMAR
S/O LATE MURALIDHAR THAKUR
AGED ABOUT 54 YEARS
W/A ADGP (TRAINING)
CARLTON HOUSE, PALACE ROAD
BENGALURU - 560 001.

... PETITIONER

(BY SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W
SRI SWAROOP S., ADVOCATE)

AND:

SMT. MAMATHA SINGH
D/O K. SHANTHAVEERAPPA
RESIDING AT D1, 161, DLF
WESTEND HEIGHTS
AKSHAYA NAGAR
BENGALURU - 560 016.

... RESPONDENT

(BY SRI HARISH GANAPATHI, HCGP)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER OF COGNIZANCE DATED 04.03.2022 PCR NO. 5436/2022 PASSED BY THE XXXIX ACMM, BENGALURU, (ANNEXURE-B); DIRECTION TO QUASH THE COMPLAINT DATED 08.02.2022 IN PCR NO. 5436/2022 PROVIDED BY THE RESPONDENT BEFORE THE XXXIX ACMM, BENGALURU FOR OFFENCES PUNISHABLE UNDER SECTIONS 34, 120A, 166A, 323, 325, 351 AND 506 OF IPC. (ANNEXURE-A) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question an order dated 04-03-2022 passed by the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru in P.C.R.No.5436 of 2022 by which cognizance is taken and summons is issued to the petitioner in the case registered by the respondent under Section 200 of the Cr.P.C., alleging offences punishable under Sections 120A, 166A, 323, 325, 351, 506 r/w 34 of the IPC.

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2. Facts, in brief, germane are as follows:-

The petitioner is an officer of the Indian Police Service working in the State of Karnataka. It is the case of the complainant that she approached the petitioner when he was holding the post of in-charge Commissioner of Police, Bangalore City to file a complaint against one Sister Shalini for intimidation and threats to withdraw a

Sri Alok Kumar vs Smt Mamatha Singh on 6 August, 2024
pending case filed under the Protection of Children from Sexual
Offences Act ('POCSO' Act) in Special Case No.31 of 2016. The
complainant is said to have spoken to the petitioner with regard to
the said case and had also requested him to take action against the
said Sister Shalini. The complainant again visits the office of the
petitioner and even on the said date the enquiry was about solving
the problem of such intimidation of the Sister Shalini.

3. On 11-02-2019 the complainant again visits the chambers
of the petitioner. It is here the allegation is that the petitioner
insisted upon the complainant not to press the matter with regard
to the case of intimidation of Sister Shalini on the score that she
was an influential person. The complainant did not budge but
insisted the petitioner to receive the complaint as it was his duty to

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receive the said complaint. At that point of time, it is alleged that
the petitioner had threatened the complainant that next time if she
steps into the office, he will book a false case against her and make
her run from pillar to post. It is also alleged that the petitioner
along with other police personnel assaulted the complainant in his
office. The complainant alleges that since she was completely
bruised and physically in pain approached the doctor for assistance
as her right eye due to the act of the petitioner was completely
damaged.

4. The complainant is said to have approached the office of

the Commissioner of Police again and sought action as was sought for earlier. The action was not initiated. She approaches State Human Rights Commission on 14-05-2019 and writes to the Ministry of Home Affairs, Ministry of Women and Child Development, Government of India. No action is taken. This is the averment in the complaint. Therefore, after about 3 years of said incident, she, on 19-02-2022 comes up with a private complaint invoking Section 200 of the Cr.P.C., alleging offences punishable as afore-quoted. On receipt of the complaint, the learned Magistrate

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by his order dated 04-03-2022 takes cognizance of the offences alleged as afore-quoted and thereafter posts the matter for recording of sworn statement. Sworn statement of the complainant was recorded and the documents produced by the complainant were taken on record as Exs.P1 to P28. After all these acts, the learned Magistrate takes one year to issue summons. It is this order that has driven the petitioner to this Court in the subject petition.

5. Heard Sri Prabhuling K. Navadgi, learned senior counsel appearing for the petitioner and Sri Harish Ganapathi, learned High Court Government Pleader appearing for the respondent.

6. The learned senior counsel submits that the petitioner on the said date was holding the post of Commissioner of Police on in-charge basis. All the events are said to have happened on 11-02-2019 and the offences so alleged are undoubtedly in the

Sri Alok Kumar vs Smt Mamatha Singh on 6 August, 2024
discharge of his official duties. Whatever is the offence, if it has
been committed in discharge of his official duties, sanction as
necessary under Section 197 of the Cr.P.C., would be imperative.
He would submit that the concerned Court could not have taken

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cognizance of the offences without at the outset appropriate
sanction being placed for such prosecution by the complainant
before the learned Magistrate.

6.1. The learned senior counsel would further contend that a perusal at the complaint would indicate that it is an incident which appears to have happened on 07-02-2019, 08-02-2019 and 11-02-2019. If the complainant had been bruised, assaulted or any other incident had happened as is projected, the complainant need not have waited for 3 years to register the crime as a private complaint which is filed on 19-02-2022 though it is dated 08-02-2022. He would submit that this unexplained delay would undoubtedly vitiate the proceedings on the score that it is mala fide and instituted only to settle other scores with the Department or with the petitioner. He would submit that sanction to prosecute and delay, would cut at the root of the matter.

7. The complainant during the pendency of proceedings before this Court has died. Since she is no more, this Court directed the State to assist the Court, notwithstanding the fact that the issue

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was a private complaint and the State is not a party to the proceedings. The State then secures the records and the learned High Court Government Pleader has made his submissions.

8. In reply, the learned senior counsel would further contend that this very complainant had registered close to 56 complaints against several officers, only to buttress his submission that she is a habitual complainant. He would stop at that since the complainant is no more.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the issue that falls for my consideration is, whether the two factors noticed supra would cut at the root of the matter and would vitiate the entire proceedings.

10. The petitioner is an Indian Police Service, Officer, who at the relevant point in time was said to be working as Commissioner of Police, in-charge or otherwise. The incident emerges on 07-02-2019 when the complainant visits the office of the petitioner, and

files a complaint against one Sister Shalini for intimidating and threatening her to withdraw a POCSO case that she had registered in Special case No.31 of 2016. Two days later she is said to have visited the office of the petitioner again. The facts freeze on 11-02-2019. Three years later, on 19-02-2022, a private

complaint is registered against the petitioner under Section 200 of the Cr.P.C. It is necessary to notice relevant paragraphs in the complaint and the prayer sought therein. They read as follows:

"2. The complainant submits that she had approached the Commissioner of Police, Bangalore on 07.02.2019 and filed a complaint against one Sister Shalini for intimidation and threatening to withdraw the POCSO case having numbered Spl.31 of 2016. The complainant further submits that on the said date the Commissioner of Police was on leave and Mr. Alok Kumar was acting Commissioner. Therefore, the said complaint was filed and the complainant had spoken to Mr. Alok Kumar with respect to the intimidation that she had been facing and requested that action may be initiated against the said Sister Shalini.

3. The complainant submits that Mr. Alok Kumar refused to receive the said complaint and insisted that the complainant approach on the next day that is on 08.02.2019. Whereas Mr. Alok Kumar was also not present on 8th and hence the complainant had returned back and re-approached on 11-02-2019. Since the complainant had already been a complainant in one of the POCSO cases filed, she had been talking to some of the other NGO members who had been present on the said day in the office of the Commissioner. After a while Mr. Alok Kumar called the complainant to his chamber in order to discuss with regard to the complaint filed by the petitioner.

...

5. The complainant being completely bruised and physically in pain having no other option reached to her residence and the next day she approached the doctor for assistance since her right eye was completely damaged.

6. The body pain had been persistent and hence she approached Victoria Hospital on 20-02-2019 and the complainant submits that a medico legal case had been reported by the Victoria Hospital to Vidhana Soudha Police Station. One Mr. Budhihall ASI had approached the complainant while she had been in the hospital and asked the complainant to go to Vidhana Soudha Police Station there the complainant met one Mr. Manjunath and claimed to be the Inspector of the Police Station, the said officer categorically declined to receive the complaint against his senior officer.

7. The complainant submits that after the above said incident the complainant approached the office of

the Police Commissioner to file a complaint against Mr. Alok Kumar said complaint. Since no action was initiated against Mr. Alok Kumar and Sister Shalini the complainant then filed complaint with respect to the above incident to the State Human Rights Commission dated 14-05-2019. The copy of the said complaints is herewith attached along with this complaint. After which the copies had been sent to the Ministry of Home Affairs, Ministry of Women and Child Development, the Chief Minister of Karnataka, the Home Minister of Karnataka, the Home Secretary, DIG, Bangalore Press Club, Karnataka State Commission for Women and the Commissioner of Police, Bangalore. In spite of these many departments requisitions having been no action have been initiated against Mr. Alok Kumar with this regard.

8. It is submitted by the complainant that she had approached the office of the Commissioner of Police requesting for help in prosecuting Sister Shalini whereas in the absence of the Commissioner, Mr. Alok Kumar had attended the complainant and insisted that no complaint should be filed against Sister Shalini and for denying to comply to his directions the complainant was physically assaulted in his chamber on 11-02-2019.

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9. In spite of filing numerous complaints before numerous authorities no action has been initiated against the above named accused. The police also denied to receive the complaint and to initiate an enquiry or to prosecute the accused for the alleged offence."

...
PRAYER

It is, therefore, must respectfully prayed that this Hon'ble Court may be pleased to -

- a. Summon, prosecute and punish the Accused under Section 34, 120-A, 166A, 323, 325, 351 and 506 and all other relevant Provisions of the India Penal Code, 1860.
- b. Such other and further orders may be passed as may be deemed fit and proper by this Hon'ble Court."

(Emphasis added)

Based upon the said complaint, cognizance is taken.

The order

taking cognizance reads as follows:

"The complainant has filed present private complaint u/s 200 of the Cr.P.C for the offence punishable under Sections 120(A), 166A, 323, 325, 351 and 506 of IPC.

The complainant has filed the present private complaint against Police Commissioner, Infantry Road, Bengaluru and other 4 unknown police constables of the office of the Police Commissioner, Infantry Road, Bengaluru.

Heard counsel for complainant about prior sanction for prosecution and also about taking cognizance.

On perusal of averments made in the complaint it is the allegation against the accused that the complainant earlier had approached the Commissioner of Police on

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07.02.2019 and filed a complaint against one Sister Shalini for criminal intimidation and threatening to withdraw POCSO case filed in Special Case No.31 of 2016. On the said date the Commissioner of Police was on leave and the present accused No.1 was acting Police Commissioner. It is further allegation that on said date the accused No.1 had refused to receive the said complaint and told to come on next day. On next day also, the accused No.1 was not present in the office. Therefore, the complainant again went to the office of accused No.1 on 11-02-2019. On said date the accused No.1 had called the complainant to his chamber in order to discuss with the complaint filed by present complainant against said Sister Shalini, the accused no.1 insisted the present accused to withdraw the complaint filed against the said Shalini and when the complainant stated that it is duty of police to receive the complaint and register a FIR, at that time the accused No.1 along with other police staff physically assaulted the complainant in his office. It is also alleged in the complaint that the accused No.1 threatened to the complainant by stating that if she comes to the Police Station or to the office of the Commissioner again, then false case will be filed against her. So on careful perusal of averments made in the complaint, it is the allegation against the accused that they insisted to withdraw the earlier complaint filed against sister Shalini and accused No.1 along with other police staff had physically assaulted to the complainant.

The complainant along with the complaint has produced

documents which shows that earlier the present complaint had filed against one Sister Shalini by alleging that said sister Shalini had gave criminal intimidation to her to withdraw the complaint filed by present complainant against one Kundan Kumar Singh who caused sexual harassment to daughter of the present complainant. Further documents produced by the complainant along with the complaint shows that, when the complainant went to the office of Police Commissioner, when there was alleged physical assault on her by present accused, she filed complaint before the Commissioner of Police, Bengaluru City Police, Infantry Road, Bengaluru on several occasion and also gave a representation before the then Home Minister of

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Government of Karnataka. When there was no action taken against the present accused for the alleged act, the complainant has filed present complaint against the accused.

As it is discussed above, the complainant has filed the present complaint against the accused No.1 who is the public servant and also against the other police staff of office of Commissioner of Police. The counsel for complainant has argued that the accused have not done their alleged act in the official capacity and therefore prior sanction is not required to register a private complaint against said accused. The counsel for complainant has relied upon several reported citations reported in 2017 (2) AKR 584 -Geetha Kulkarni and others v. State by Vivek Nagar, by others, 2013 (3) KCCR 2145 -State by PSI Mahalakshmi Lay-out PS Vs. DP Kumar; 2020(4) AKR 791 Vikas Kumar Vs. Police Inspector, Town PS, Chickamangalore and another and also another ruling reported in AIR 2019 Supreme Court 1691 Devendra Prasad Singh Vs. State of Bihar and another. On careful perusal of the principle laid down in aforesaid rulings, it has been categorically held by Hon'ble High Court of Karnataka and also Hon'ble Supreme Court of India that when there is criminal intimidation or assault caused by any police official, such act of police official does not come under discharge of official duty and sanction for prosecuting police officials not warranted. On perusal of the facts involved in all the afore-quoted rulings there was allegation against the police officials about giving of criminal intimidation and also giving threat and causing hurt when the public had gone to police station for lodging the complaint. The facts involved in the present case also similar to the facts stated in the afore quoted rulings and it has been categorically held that causing alleged hurt, giving criminal intimidation by the police officials is not having nexus or relation with discharge of official duty of the Government officials and therefore, sanction for prosecution is not necessary. The principle laid down in the aforesaid rulings is aptly applicable to the case on hand. It is the allegation against the present

accused that they gave criminal intimidation to the complainant and also assaulted her by insisting her to withdraw the complaint filed against one sister Shalini. The alleged act does not come under the purview of official duty and therefore, prior sanction to prosecute the case against her present accused is not required.

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As it is discussed above, the complaint and also material documents produced by the complainant it discloses that complainant prior to the lodging of present private complaint she had exhausted all the remedies available to her before higher police officials and when there was negative response by the said police officials she filed present private complaint against the accused. The present complainant has also filed an affidavit as required u/s 154 & 156 (3) of Cr.P.C. Therefore, on careful scrutinization of the private complaint filed by the complainant and all the materials produced by the complainant there are *prima facie* materials to proceed with the case. Therefore, this court has taken cognizance of the said offences punishable u/s 120-A, 166A, 323, 325, 351 and 506 of IPC and proceed to record the sworn statement of the complainant. Therefore, this Court pass the following:

ORDER

Office to register this private complaint as PCR and for sworn statement of complainant Call on 21-04-2022."

(Emphasis added) The concerned Court records a finding that sanction is not required in the case at hand, as the case is of criminal intimidation and causing hurt when the complainant had been to the office of the petitioner for lodging a complaint. It is construed, rather misconstrued that sanction is not necessary in the case at hand.

Section 197 of the Cr.P.C., reads as follows:

"197. Prosecution of Judges and public servants.-- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013--

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.--For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Interpretation of Section 197 of Cr.P.C., need not detain this Court for long or delve deep into the matter. . It becomes germane to notice the line of law as laid down by the Apex Court right from 1955 interpreting Section 197 of the Cr.P.C. with regard to sanction being imperative to prosecute public servants; sanction only at the time when the concerned Court takes cognizance of the offence.

11. The Apex Court in the case of AMRIK SINGH v. STATE OF PEPSU¹ has held as follows:

"7. The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and (1955)¹ SCR 1302 could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

8. It is conceded for the respondent that on the principle above enunciated, sanction would be required for prosecuting the appellant under Section 465, as the charge was in respect of his duty of obtaining signatures or thumb impressions of the employees before wages were paid to them. But he contends that misappropriation of funds could, under no circumstances, be said to be within the scope of the duties of a public servant, that he could not, when charged with it, claim justification for it by virtue of his office, that therefore no sanction under Section 197(1) was necessary, and that the question was concluded by the decisions in Hori Ram Singh v. Emperor [AIR 1939 FC 43 :

1939 FCR 159] and Albert West Meads v. King [AIR 1948 PC 156 : 75 IA 185], in both of which the charges were of criminal misappropriation. We are of opinion that this is too broad a statement of the legal position, and that the two decisions cited lend no support to it. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary;

but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be

required."

(Emphasis supplied) Later, the Apex Court in the case of PUKHRAJ v. STATE OF RAJASTHAN² has held as follows:

"2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case [AIR 1939 FC 43: 1939 FCR 159: 40 Cri LJ 468] to the latest decision of (1973) 2 SCC 701 this Court in Bhagwan Prasad Srivastava v. N.P. Misra [(1970) 2 SCC 56: (1971) 1 SCR 317]. While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty.

The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh case Sulaiman, J. observed:

"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."

In the same case Varadachariar, J. observed: "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee of the Privy Council observed in Gill [AIR 1948 PC 128 : 1948 LR 75 IA 41 :

49 Cri LJ 503] case:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty.... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office."

In Matajog Dobey v. H.C. Bhari [AIR 1955 SC 44: (1955) 2 SCR 925: 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:

"There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations."

(Emphasis supplied) Elaborating the said consideration, the Apex Court in the case of SANKARAN MOITRA v. SADHNA DAS³ has raised the following issue:

"6. The High Court by order dated 11-7-2003 dismissed the application. It overruled the contention of the accused based on Section 197 of the Code of Criminal Procedure thus:

"In its considered view Section 197 Cr.P.C., has got no manner of application in the present case. Under Section 197 Cr.P.C., sanction is required only if the public servant was, at the time of commission of offence, 'employed in connection with the affairs of the Union or of a State' and he was 'not removable from his office save by or with the sanction of the Government'. The bar under Section 197 Cr.P.C., cannot be raised by a public servant if he is removable by some authority without the sanction of the Government.

Committing an offence can never be a part of an official duty. Where there is no necessary connection between the act and the performance of the duties of a public servant, Section 197 Cr.P.C., will not be attracted. Beating a person to death by a police officer cannot be regarded as having been committed by a public servant within the scope of his official duties."

Finding on the said issue by the Apex Court is as follows:

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man (2006) 4 SCC 584 could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case.

We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.

26. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with."

(Emphasis supplied) The Power of High Court which was questioned before the Apex Court was set aside on the sole ground that there was no sanction under Section 197 of the Cr.P.C. to prosecute the petitioners.

Again, the Apex Court in the case of DEVINDER SINGH v. STATE OF PUNJAB⁴, has held as follows:

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C., has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 Cr.P.C.. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence.

In case offence was incomplete without proving, the (2016) 12 SCC 87 official act, ordinarily the provisions of Section 197 Cr.P.C., would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided *prima facie* on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

(Emphasis supplied) Following these judgments, the Apex Court in the case of D.DEVARAJA v. OWAIS SABEER HUSSAIN⁵ has held as follows:

"30. The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] : (AIR p. 48, para 15) "15. ... Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. ...

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."

31. In Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] this Court held: (SCC p. 703, para 2) "2. ... While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an (2020)⁷ SCC 695 act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."

32. In Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309 : 1955 Cri LJ 865] this Court referred to the judgments of the Federal Court in Hori Ram Singh v. Crown [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2: AIR 1939 FC 43]; H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10]:

AIR 1947 FC 9] and the judgment of the Privy Council in Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC 128] and held: (Amrik Singh case [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865], AIR p. 312, para 8) "8. The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure;

nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

33. Section 197 of the Code of Criminal Procedure, 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140], Pukhraj [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] and Amrik Singh [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] is in pari materia with Section 197 of the Code of Criminal Procedure, 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.

34. In Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court held : (SCC pp. 46-47, para 7) "7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty."

(emphasis supplied)

35. In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104] this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

36. In Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with Section 197 of the Code of Criminal Procedure. This Court held:

(AIR pp. 292-93, paras 18-19) "18. Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning.

What it says is--

'When any public servant ... is accused of any "offence" alleged to have been committed by him while acting or purporting to act in the discharge of his official duty....' We have therefore first to concentrate on the word "offence".

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against Accused 2 are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity.

Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because Accused 2 could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained

unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done : in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

37. The scope of Section 197 of the old Code of Criminal Procedure, was also considered in P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 :

1967 Cri LJ 665] where this Court held : (AIR p. 778, para 6) "6. ... It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."

"If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable...."

38. In B. Saha v. M.S. Kochhar [B. Saha v. M.S. Kochhar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] this Court held : (SCC p. 185, para 18) "18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."

39. In Virupaxappa Veerappa Kadampur v. State of Mysore [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] cited by Mr Poovayya, a three-Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".

40. In Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 :

(1963) 1 Cri LJ 814] this Court referred (at AIR p. 851, para 9) to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Edn., which is as follows:

"Colour of office, when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

41. This Court also referred (at AIR p. 852, para 9) to the meaning of "colour of office" in Stroud's Judicial Dictionary, 3rd Edn., set out hereinbelow:

"Colour:"Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon vice, and the office is as a shadow to it. But "by reason of the office" and "by

"virtue of the office" are taken always in the best part."

42. After referring to the Law Lexicons referred to above, this Court held : (Virupaxappa Veerappa Kadampur case [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] , AIR p. 852, para 10) "10. It appears to us that the words "under colour of duty" have been used in Section 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood". The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

43. In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows : (SCC p. 89, para 32) "32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 : 1960 Cri LJ 410]). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

(emphasis supplied)

44. In Sankaran Moitra v. Sadhna Das [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358] the majority referred to Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC 128], H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10: AIR 1947 FC 9]; Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: 1955 Cri LJ 857]; Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] ; Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140]; Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701:

1973 SCC (Cri) 944]; B. Saha v. M.S. Kochhar [B. Saha v. M.S. Kochhar, (1979) 4 SCC 177: 1979 SCC (Cri) 939]; Bakhshish Singh Brar v. Gurmej Kaur [Bakhshish Singh

Brar v. Gurmej Kaur, (1987) 4 SCC 663 : 1988 SCC (Cri) 29]; Rizwan Ahmed Javed Shaikh v. Jammal Patel [Rizwan Ahmed Javed Shaikh v. Jammal Patel, (2001) 5 SCC 7] and held: (Sankaran Moitra case [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358], SCC pp. 602-603, para 25) "25. The High Court has stated [Sankaran Moitra v. Sadhna Das, 2003 SCC OnLine Cal 309 :

(2003) 4 CHN 82] that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of the learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

45. The dissenting view of C.K. Thakker, J. in Sankaran Moitra [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584 :

(2006) 2 SCC (Cri) 358] supports the contention of Mr Luthra to some extent. However, we are bound by the majority view.

Furthermore even the dissenting view of C.K. Thakker, J. was in the context of an extreme case of causing death by assaulting the complainant.

46. In K.K. Patel v. State of Gujarat [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] this Court referred to Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 :

(1963) 1 Cri LJ 814] and held : (K.K. Patel case [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200], SCC p. 203, para 17) "17. The indispensable

ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant.

For the offences under Sections 167 and 219 IPC the pivotal ingredient is the same as for the offence under Section 166 IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

.....

55. Devinder Singh v. State of Punjab [Devinder Singh v. State of Punjab, (2016) 12 SCC 87: (2016) 4 SCC (Cri) 15: (2017) 1 SCC (L&S) 346] cited by Mr Luthra is clearly distinguishable as that was a case of killing by the police in fake encounter. Satyavir Singh Rathi v. State [Satyavir Singh Rathi v. State, (2011) 6 SCC 1: (2011) 2 SCC (Cri) 782] also pertains to a fake encounter, where the deceased was mistakenly identified as a hardcore criminal and shot down without provocation. The version of the police that the police had been attacked first and had retaliated, was found to be false. In the light of these facts, that this Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder could be within the expression "colour of duty". This Court dismissed the appeals of the policemen concerned against conviction, inter alia, under Section 302 of the Penal Code, which had duly been confirmed [Satyavir Singh Rathi v. State, 2009 SCC OnLine Del 2973] by the High Court. The judgment is clearly distinguishable.

.....

61. In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court held : (SCC pp. 90-91 & 95, paras 34 & 42-43) "34. In Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of abovequoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 :

AIR 1939 FC 43] and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 :

AIR 1939 FC 43] because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that : (Matajog Dobey case [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] , AIR p. 49, para 20) '20. ... the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings.' *** The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial.

This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code

must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed."

....

65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassing, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no

question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."

(Emphasis supplied)

12. The Apex Court, after the afore-quoted judgments, has laid down a nexus test to determine whether sanction under Section 197 of the Cr.P.C. would be required, even in cases where the alleged acts attract any performance in the discharge of official duties of the public servant. The Apex Court in the case of A. SRINIVASULU v. STATE, REP. BY THE INSPECTOR OF POLICE⁶, while framing an issue with regard to sanction under Section 197 Cr.P.C., has held as follows:

".....

29. There is no dispute about the fact that A-1 to A- 4, being officers of a company coming within the description contained in the Twelfth item of Section 21 of the IPC, were 'public servants' within the definition of the said expression under Section 21 of the IPC. A-1 to A-4 were also public servants within the meaning of the expression under Section 2(c)(iii) of the PC Act. Therefore, there is a requirement of previous sanction both under Section 197(1) of the Code and under Section 19(1) of the PC Act, for prosecuting A-1 to A-4 for the offences punishable under the IPC and the PC Act.

30. Until the amendment to the PC Act under the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2023 SCC OnLine SC 900 2018), with effect from 26.07.2018, the requirement of a previous sanction under Section 19(1)(a) was confined only to a person "who is employed". On the contrary, Section 197(1) made the requirement of previous sanction necessary, both in respect of "any person who is" and in respect of "any person who was" employed. By the amendment under Act 16 of 2018, Section 19(1)(a) of the PC Act was suitably amended so that previous sanction became necessary even in respect of a person who "was employed at the time of commission of the offence".

31. The case on hand arose before the coming into force of the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018). Therefore, no previous sanction under Section 19(1) of the PC Act was necessary insofar as A-1 was concerned, as he had retired by the time a final report was filed. He actually retired on 31.08.1997, after 7 months of registration of the FIR (31.01.1997) and 5 years before the filing of the final report (16.07.2002) and 6 years before the Special Court took cognizance (04.07.2003). But previous sanction under Section 19(1) of the PC Act was required in respect of A-3 and A-4, as they were in service at the time of the Special Court taking cognizance. Therefore, the Agency sought sanction, but the Management of BHEL refused to grant sanction not once but twice, insofar as A-3 and A-4 are concerned.

32. It is by a quirk of fate or the unfortunate circumstances of having been born at a time (and consequently retiring at a particular time) that the benevolence derived by A- 3 and A-4 from their employer, was not available to A-1. Had he continued in service, he could not have been prosecuted for the offences punishable under the PC Act, in view of the stand taken by BHEL.

33. It appears that BHEL refused to accord sanction by a letter dated 24.11.2000, providing reasons, but the CVC insisted, vide a letter dated 08.02.2001. In response to the same, a fresh look was taken by the CMD of BHEL. Thereafter, by a decision dated 02.05.2001, he refused to accord sanction on the ground that it will not be in the commercial interest of the Company nor in the public interest of an efficient, quick and disciplined working in PSU.

34. The argument revolving around the necessity for previous sanction under Section 197(1) of the Code, has to be considered keeping in view the above facts. It is true that the refusal to grant sanction for prosecution under the PC Act in respect of A-3 and A-4 may not have a direct bearing upon the prosecution of A-1. But it would certainly provide the context in which the culpability of A-1 for the offences both under the IPC and under the PC Act has to be determined.

35. It is admitted by the respondent-State that no previous sanction under section 197(1) of the Code was sought for prosecuting A-1. The stand of the prosecution is that the previous sanction under Section 197(1) may be necessary only when the offence is allegedly committed "while acting or purporting to act in the discharge of his official duty". Almost all judicial precedents on Section 197(1) have turned on these words. Therefore, we may now take a quick but brief look at some of the decisions.

36. Dr. Hori Ram Singh v. The Crown³ is a decision of the Federal Court, cited with approval by this court in several decisions. It arose out of the decision of the Lahore High Court against the decision of the Sessions Court which acquitted the appellant of the charges under Sections 409 and 477A IPC for want of consent of the Governor. Sir S. Varadachariar, with whose opinion Gwyer C.J., concurred, examined the words, "any act done or purporting to be done in the execution of his duty"

appearing in Section 270(1) of the Government of India Act, 1935, which required the consent of the Governor. The Federal Court observed at the outset that this question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances. The Federal Court then referred by way of analogy to a number of rulings under Section 197 of the Code and held as follows:--

"The reported decisions on the application of sec. 197 of the Criminal Procedure Code are not by any means uniform. In most of them, the actual conclusion will probably be found to be unexceptionable, in view of the facts of each case; but, in some, the test has been laid down in terms which it is difficult to accept as exhaustive or correct. Much the same may be said even of decisions pronounced in England, on the language, of similar statutory provisions (see observations in Booth v. Clive. It does not seem to me necessary to review in detail the decisions given under sec. 197 of the Criminal Procedure Code which may roughly be classified as falling into three groups, so far as they attempted to state something in the nature of a test. In one group of cases, it is insisted that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it : cf. In re Sheik Abdul Khadir Saheb; Kamisetty Raja Rao v. Ramaswamy, Amanat Ali v. King-emperor, King-

Emperor v. Maung Bo Maung and Gurushidayya
Shantivirayya Kulkarni v. King-Emperor. In another

group, more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence. It seems to me that the first is the correct view. In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed [see Gangaraju v. Venki, quoting from Mitra's Commentary on the (Criminal Procedure Code). The use of the expression "while acting" etc., in sec. 197 of the Criminal Procedure Code (particularly its introduction by way of amendment in 1923) has been held to lend some support to this view. While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test. To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government"

37. It is seen from the portion of the decision extracted above that the Federal Court categorised in Dr. Hori Ram Singh (*supra*), the decisions given under Section 197 of the Code into three groups namely (i) cases where it was held that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; (ii) cases where more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence; and (iii) cases where stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed. While preferring the test laid down in the first category of cases, the Federal Court rejected the test given in the third category of cases by providing the illustration of a medical officer committing rape on one of his patients or committing theft of a jewel from the patient's person.

38. In *Matajog Dobey v. H.C. Bhari*⁴ a Constitution Bench of this Court was concerned with the interpretation to be given to the words, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 of the Code. After referring to the decision in Dr. Hori Ram Singh, the Constitution Bench summed up the result of the discussion, in paragraph 19 by holding : "There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

39. In *State of Orissa through Kumar Raghvendra Singh v. Ganesh Chandra Jew*⁵, a two Member Bench of this Court explained that the protection under Section 197 has certain limits and that it is available only when the alleged act is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Court also explained that if in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act

and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.

40. The above decision in State of Orissa (*supra*) was followed (incidentally by the very same author) in K. Kalimuthu v. State by DSP⁶ and Rakesh Kumar Mishra v. State of Bihar⁷.

41. In Devinder Singh v. State of Punjab through CBI⁸, this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned.

Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

...."

42. In D. Devaraja v. Owais Sabeer Hussain⁹, this Court explained that sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/or act done under colour of or in excess of such duty or authority. This Court also held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty.

43. Keeping in mind the above principles, if we get back to the facts of the case, it may be seen that the primary charge against A-1 is that with a view to confer an unfair and undue advantage upon A-5, he directed PW-16 to go for limited tenders by dictating the names of four bogus companies, along with the name of the chosen one and eventually awarded the contract to the chosen one. It was admitted by the prosecution that at the relevant point of time, the Works Policy of BHEL marked as Exhibit P-11, provided for three types of tenders, namely (i) Open Tender; (ii) Limited/Restricted Tender; and (iii) Single Tender.

44. Paragraph 4.2.1 of the Works Policy filed as Exhibit P- 11 and relied upon by the prosecution laid down that as a rule, only works up to Rs. 1,00,000/- should be awarded by Restricted Tender. However, paragraph 4.2.1 also contained a rider which reads as follows:

"4.2.1 ... However even in cases involving more than Rs. 1,00,000/- if it is felt necessary to resort to Restricted Tender due to urgency or any other reasons it would be open to the General Managers or other officers authorised for this purpose to do so after recording reasons therefor."

45. Two things are clear from the portion of the Works Policy extracted above. One is that a deviation from the rule was permissible. The second is that even General Managers were authorised to take a call, to deviate from the normal rule and resort to Restricted Tender.

46. Admittedly, A-1 was occupying the position of Executive Director, which was above the rank of a General Manager. According to him he had taken a call to go for Restricted Tender, after discussing with the Chairman and Managing Director. The Chairman and Managing Director, in his evidence as PW-28, denied having had any discussion in this regard.

47. For the purpose of finding out whether A-1 acted or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy. Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.

48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal v. State of Punjab¹⁰. It reads as follows:--

"50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (*supra*) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (*supra*) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.

52. It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 and A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company. If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code.

53. In view of the above, we uphold the contention advanced on behalf of A-1 that the prosecution ought to have taken previous sanction in terms of Section 197(1) of the Code, for prosecuting A-1, for the offences under the IPC."

(Emphasis supplied) The Apex Court holds that even for acts performed beyond the discharge of official duties, if have nexus to performance of official duties, previous sanction under Section 197 of the Cr.P.C. is imperative, even if the offences are punishable for cheating and forgery.

13. On a coalesce of the judgments rendered by the Apex Court as quoted supra, what would unmistakably emerge is, if there is no nexus with the acts alleged to the discharge of official duties sanction would not be required, but if the alleged acts are in the discharge of official duties sanction would be imperative. In the light of the preceding analysis, it cannot but be said that the acts of the petitioner was in discharge of his official duty. Therefore, sanction under Section 197 of the Cr.P.C., was undoubtedly imperative.

14. The offences alleged in the case at hand are the ones punishable under Sections 166A, 323, 325, 351 and 506 of the IPC.

The facts narrated in the complaint, as quoted supra, would leave none in doubt that the actions alleged are all in the discharge of official duty of the petitioner, as the complainant is said to have visited the office of the petitioner to register a complaint and at that point in time it is alleged that the petitioner had threatened the complainant. If this cannot be held in discharge of official duty, it is ununderstandable as to what else it can be. The concerned Court has deliberately glossed over the settled principle of law. The concerned Court notices that there is no sanction and records, that sanction is not necessary. This, on the face of it, is erroneous and could not have been held so. Therefore, on the issue of sanction, the petition deserves to succeed as it cuts at the root of the matter.

But, on the ground of sanction if the order of cognizance is quashed, it would not obliterate the complaint. The complaint would still be alive. Therefore, I deem it appropriate to notice whether the complaint should be kept alive or obliterated.

15. The incident is said to have taken place, even according to the complainant, on three days. As quoted hereinabove, on 07-02-2019, 08-02-2019 and 11-02-2019. The allegation was intimidation and causing hurt which had left the complainant bruised. If that be so, the complainant need not/should not have waited for three long years i.e., 36 months, to register a complaint, that she had been bruised and intimated by the petitioner three years ago. A perusal at the complaint, which is quoted hereinabove, would clearly indicate not even a speck of explanation is rendered for the delay of three years in registering the complaint. Therefore, permitting even the complaint to be alive would become contrary to law, as it is shrouded with complete improbability. Delay in such cases defeats acts of setting the criminal law in motion. The Apex Court considers this very issue and answers that such complaints or proceedings should not be permitted to continue. The Apex Court in the case of CHANCHALPATI DAS v. STATE OF WEST BENGAL⁷ has held as follows:

"....

10. Having gone through the pleadings of the parties and the documents on record and having anxiously considered the submissions made by the learned counsel for the parties, it emerges that according to the complainant-respondent, a letter in the form of complaint was written by the Branch Manager of the ISKCON Kolkata, on 30.09.2006 addressed to the officer in-charge, Ballygunge Police Station, Kolkata, in respect of an alleged theft of a bus having taken place in 2001, however, no action was taken by the said police station. Though, the complainant had reported the matter to the concerned Police Station earlier on 22nd May, 2002, however, no action was taken in that regard. It is pertinent to note that with regard to the said allegations against the concerned police station, there is nothing on record to suggest that either the said report dated 22.05.2002 or the letter dated 30.09.2006 was ever received by the concerned police station or any follow up action was taken by the respondent-complainant in that regard. According to the respondent-complainant, since no action was taken on the letter dated 30th September, 2006 written to the concerned Police Station, the complaint was lodged in the court of Chief Judicial Magistrate, Alipore on 10th February, 2009, which was registered as C.R. Case No. 747 of 2009, seeking investigation under Section 156(3) of Cr. P.C.

11. It is again pertinent to note that, even as per the case of the complainant, the alleged incident of bus theft had taken place in the year 2001, and it was only in 2009 that the substantial complaint was made in the Court of Chief Judicial Magistrate, Alipore. It is just not believable that the concerned Ballygunge Police Station, Kolkata would not have taken any action on the report made in 2002 on behalf of the powerful body like the ISKCON Kolkata, or on the letter dated 30.09.2006 written by the Branch Manager of the ISKCON, Kolkata. The respondent no. 2-complainant also did not take any concrete action for getting the said complaint registered with regard to the alleged theft of bus for a long period of eight years, till the complaint in the Court was filed in the year 2009. In the opinion of the Court such an inordinate delay of eight years in filing the complaint in the court itself would be a sufficient ground to quash the proceedings. If the luxury bus owned by the ISKCON, Kolkata Branch in 1998 was so precious to them, they would not have sat silent for such a long time of eight years. In our opinion, the criminal machinery set into motion by filing the complaint for the alleged incident which had taken place eight years ago, that act itself was nothing but a sheer misuse and abuse of the process of the court.

12. That apart, from the bare perusal of the complaint filed before the Court, on the basis of which the FIR was registered at the Ballygunge Police Station on 20th February, 2009, it is discernible that except bald allegations made in the complaint with regard to the theft of bus in question there was no material or document produced by the complainant to substantiate the allegations against the appellants. Even after the investigation of the said complaint, there was no evidence collected by the investigating officer to prima facie satisfy the ingredients constituting the alleged offences under Sections 468, 471, 406 and 120B of IPC. Even if the allegations made in the complaint as well as in the Charge sheet are taken at their face value none of the ingredients constituting the alleged offences are culled out. The learned Senior Counsel Mr. Shyam Divan for the appellants had strenuously urged relying upon the documents pertaining to the transfer of ownership and registration of the said bus, that the said documents were executed by the then authorized persons of the ISKCON Kolkata, in our opinion, the said documents could not be considered in these proceedings, the same being not the part of the charge-sheet papers. In any case, there is nothing to

suggest from the other documents on record of the instant appeals that the investigating officer had even bothered to collect any cogent or substantive evidence against the appellants to prosecute them for the alleged offences. There was no expert opinion obtained or scientific evidence collected on the documents allegedly forged to show as to by whom, when and how the theft of vehicle and forgery of documents were committed. Under the circumstances, allowing such prosecution to continue would not only be an empty formality but would be gross wastage of court's precious time.

13. It cannot be gainsaid that the High Courts have power to quash the proceedings in exercise of powers under Section 482 of Cr. P.C. to prevent the abuse of process of any Court or otherwise to secure the ends of justice. Though the powers under Section 482 should be sparingly exercised and with great caution, the said powers ought to be exercised if a clear case of abuse of process of law is made out by the accused. In the State of Karnataka v. L. Muniswamy¹¹ had held that the criminal proceedings could be quashed by the High Court under Section 482 if the court is of the opinion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.

14. This Court, way back in 1992 in the landmark decision in case of State of Haryana v. Bhajan Lal (Supra), after considering relevant provisions more particularly Section 482 of the Cr. P.C. and the principles of law enunciated by this Court relating to the exercise of extra-ordinary powers under Article 226, had laid down certain guidelines for the exercise of powers of quashing, which have been followed in umpteen number of cases. The relevant part thereof reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In State of A.P. v. Golconda Linga Swamy¹² this Court had observed that the Court would be justified to quash the proceedings if it finds that initiation or continuance of such proceedings would amount to abuse of the process of Court.

16. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora v. State of Tamil Nadu¹³ that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.

17. In the light of afore-stated legal position, if the facts of the case are appreciated, there remains no shadow of doubt that the complaint filed by the respondent-complainant after an inordinate unexplained delay of eight years was nothing but sheer misuse and abuse of the process of law to settle the personal scores with the appellants, and that continuation of such malicious prosecution would also be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint nor in the chargesheet, disclose any *prima facie* case against the appellants. The allegations made against the appellants are so absurd and improbable that no prudent person can ever reach to a conclusion that there is a sufficient ground for proceeding against the appellants-accused.

18. Before parting, a few observations made by this Court with regard to the misuse and abuse of the process of law by filing false and frivolous proceedings in the Courts need to be reproduced. In the Court. In Dalip Singh v. State of Uttar Pradesh it was observed that:

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post- Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."

19. In Subrata Roy Sahara v. Union of India it was observed as under:

"191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims."

20. We would like to add that just as bad coins drive out good coins from circulation, bad cases drive out good cases from being heard on time. Because of the proliferation of frivolous cases in the courts, the real and genuine cases have to take a backseat and are not being heard for years together. The party who initiates and continues a frivolous, irresponsible and senseless litigation or who abuses the process of the court must be saddled with exemplary cost, so that others may deter to follow such course. The matter should be viewed more seriously when people who claim themselves and project themselves to be the global spiritual leaders, engage themselves into such kind of frivolous litigations and use the court proceedings as a platform to settle their personal scores or to nurture their personal ego."

(Emphasis supplied) The Apex Court, in the afore-quoted judgment, clearly holds that complaints that are stale should not be permitted to lie over and in exercise of jurisdiction under Section 482 of the Cr.P.C., if the Court comes across such complaints of gross delay, totally unexplained, should obliterate the same.

16. The aforesaid two factors, one of sanction not being in place as on the date of taking cognizance by the concerned Court and the delay of three years in registering the complaint, completely unexplained, would cut at the root of the matter. On these two scores the petition deserves to succeed by obliteration of the order impugned and the entire proceedings, failing which, it would become an abuse of the process of the law and result in miscarriage of justice.

17. For the aforesaid reason, the following:

ORDER

(i) Writ Petition is allowed.

(ii) Entire proceedings in P.C.R.No.5436 of 2022 pending before the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru including the order passed therein on 04-03-2022 stand quashed.

Consequently, I.A.Nos.1 and 2 of 2024 stands disposed.

Sd/-

(M. NAGAPRASANNA) JUDGE bkp CT:MJ

Sri Anil Kumar vs The Assistant Commissioner on 12 July, 2024

1

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF July 12, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.5479 OF 2020

C/W

CRIMINAL PETITION NO.4818 OF 2020

WRIT PETITION NO.7470 OF 2021 (GM-RES)

WRIT PETITION NO.7539 OF 2021 (GM-RES)

IN CRL.P NO. 5479/2020

BETWEEN:

1. BALASAHEB PATIL
S/O. LATE. BABAGOURA PATIL
AGED ABOUT 72 YEARS
RETD. DEPUTY SUPERINTENDENT OF POLICE
2. SMT. CHANNAMMA PATIL
W/O. BALASHEB PATIL
AGED ABOUT 63 YEARS

BOTH ARE R/AT NO.004, GROUND FLOOR
PYRAMID TEMPLE BELL APARTMENT
KENCHENAHALLI, RAJARAJESWARINAGAR
BANGALORE-560 098.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

2

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS

3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

(RESPONDENT 2 AND 3 ARE MINORS
REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN).

4. ANIL KUMAR
S/O BALASAHEB PATIL
AGED ABOUT 43 YEARS
ALL ARE R/AT NO.73, KPA BLOCK
I MAIN, CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED UNDER U/S.482
CR.P.C, PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 PENDING ON THE FILE OF
M.M.T.C.-IV, BENGALURU AND ALLOW THIS CRL.P.

3

IN CRL.P.NO.4818/2020
BETWEEN:

1. BASANAGOUDA
S/O. LATE. BABAGOUDA PATIL
AGED ABOUT 60 YEARS
OCC. ENGINEER
R/AT NO. 115, 2ND MAIN
AMRUTHNAGAR, HEBBAL
BANGALORE-560 092.

2. SMT. ASHWINI
W/O. SATISH RACHANNA
AGED ABOUT 40 YEARS
R/AT FLAT NO. L-806
BRIGADE METROPOLIS
GARUDACHARAPALYA
MAHADEV PURA
BANGALORE-560 048.

3. SMT. SHANTALA
W/O. JAISHEEL DHANDARGI
AGED ABOUT 37 YEARS

PRESENTLY R/AT PYRAMID TEMPLE BELLS
GROUND FLOOR, B BLOCK
IDEAL HOMES LAYOUT
RR NAGAR, BANGALORE-560040.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

4

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS
3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

RESPONDENTS 2 & 3 ARE MINORS REPRESENTED BY
THEIR MOTHER AND NATURAL GUARDIAN
RESPONDENT NO. 1

ALL ARE R/AT NO.73, KPA BLOCK,
I MAIN , CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED U/S.482 CR.P.C,
PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 ON THE FILE OF IV M.M.T.C.,
BENGALURU AND ALLOW THIS CRIMINAL PETITION.

5

IN W.P.NO.7470/2021

BETWEEN:

SRI ANIL KUMAR
S/O SRI.BALASAHEB BABAGOUDA PATIL
AGED 42 YEARS
R/AT HOUSE NO.73

KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONER

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.
2. SRI. BALASAHEB BABAGOURA PATIL ALIAS B.B.
PATIL
S/O LATE SRI. BABAGOURA PATIL
R/AT HOUSE NO.73, KPA BLOCK
1ST MAIN, CHANDRA LAYOUT
BANGALORE-560 040.
3. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R3;
SRI AJAY J.N., ADVOCATE FOR R2)

6

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DTD 30.03.2021 VIDE ANNX-C
PASSED BY R-1 AND ETC.

IN W.P.NO.7539/2021
BETWEEN:

1. SMT. SONY @SONIA PATIL
W/O SRI ANIL KUMAR PATIL
AGED ABOUT 37 YEARS
2. ANSH PATIL
S/O ANIL KUMAR PATIL
AGED ABOUT 7 YEARS
3. AKIRA
D/O ANIL KUMAR PATIL
AGED ABOUT 3 YEARS

PETITIONER NOS.2 & 3 ARE MINORS ARE
REPRESENTED BY THEIR LEGAL GUARDIAN I.E
PETITIONER NO.1

ALL ARE RESIDENTS OF NO.73
KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONERS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

7

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560009
2. MR. BALASAHEB BABAGOUDE PATIL ALIAS B.B.
PATIL
S/O LATE BABAGOUDE PATIL
AGED ABOUT 71 YEARS
GARAGE PORTION OF GROUND FLOOR
HOUSE LPREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGLAORE-560040.
3. MR. ANIL KUMAR
S/O BALASAHEB BABAGOUDE PATIL
AGED ABOUT 42 YEARS
GROUND FLOOR
HOUSE PREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGALORE-560040.
4. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R4;
SRI AJAY J.N., ADVOCATE FOR R2;
SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DATED 30.03.2021 VIDE
ANNEXURE-B PASSED BY R-1 AND ETC.

THESE CRIMINAL PETITIONS AND WRIT PETITIONS
HAVING BEEN HEARD AND RESERVED FOR ORDERS ON
22.06.2024, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the matter at hand, various legal provisions and acts are invoked creating a complex web of familial and legal disputes surrounding the residential property No.73 in Chandra Layout, Bengaluru. The legal saga surrounding the residential property in Chandra Layout, Bengaluru unfolds a tangled narrative of familial discord between a father and a son. These petitions are filed by father, mother and daughters on one side and the daughter-in-law on the other side. Therefore, this Court deems it fit to cull the family tree produced in the partition suit filed by son (Anilkumar) against his father, uncle, mother and sisters in O.S.No.41/2019. The family tree is as under:

Babagouda @ Babugouda (Dead) | | Shantabai (wife) (died) | | | | Balasaheb
Umannagouda Basannagouda (D1) @ Umeshgouda (D2) (D3) | | | Channamma
(wife) (D4) | | | _____ | | | Anil Ashwini
Shantala Swati (Pltf.) (D5) (D6) (D7)

2. The father BalasahebPatil, is a Retired Police Officer and therefore, claims that the residential house at Chandra Layout, Bengaluru is his self acquired property. The father asserts that while he was serving as Police Officer, he applied for allotment of plot to the BDA and the authorities have allotted a site on 31.03.1999 and sale deed is executed on 29.03.2014. At its core lies a fundamental disagreement between BalasahebPatil and his son, Anilkumar, regarding the nature of the property. The family owns several agricultural lands, commercial properties and sites at Bijapur and other cities. There appears to be dispute after BalasahebPatil asserted that the residential house at Chandra Layout is his self acquired property whereas his son Anilkumar contends it to be a joint family ancestral property. This foundational dispute has led to a series of legal battles between father and son that delve into complex intersections of family dynamics and legal statutes.

3. The father BalasahebPatil lodged a complaint before the Deputy Commissioner of Police on 30.04.2019 requesting the police officer to take suitable action against his son and deliver possession of second and third floors of the residential house to enable him to lead a peaceful life. This action of father led son to institute a partition suit in O.S.No.41/2019 on the file of the Senior Civil Judge, Sindgi. It seems on receipt of summons, father (BalasahebPatil) filed a petition in Misc. Petition No.69/2019-20 against son under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "Senior Citizens Act, 2007") requesting to evict the son and his family members from the schedule property and to handover physical possession of

second floor and third floor. Simultaneously, Anilkumar's wife namely Sony @ Sonia Patil initiates legal action under the Domestic Violence Act, 2005 (for short "D.V. Act, 2005) alleging harassment and seeking remedies against in-laws and sisters-in-law. The miscellaneous petition filed by father was allowed by the authority and Anilkumar (son) was directed to handover vacant possession to the father.

4. Challenging the order passed by the Assistant Commissioner under Sections 5 and 23 of D.V.Act, 2005 calling upon the son to handover vacant possession, two petitions are filed before this Court. Anilkumar (son) assailing the eviction order of the Tribunal dated 30.03.2021 has filed a petition in W.P.No.7470/2021. The daughter-in-law and children though not party before the Tribunal have also questioned the eviction order of the Tribunal in W.P.No.7539/2021. The proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 is also challenged by the in-laws in two petitions. Balasaheb Patil's brother namely Basanagouda Patil assailing the proceedings initiated by daughter-in-law under the provisions of the D.V.Act, 2005 has filed Crl.P.No.4818/2020. Balasaheb Patil and his wife are seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 by filing Crl.P.No.5479/2020 (D.V.Act, 2005).

5. Learned counsel appearing for the father, mother and daughters in all these petitions placing reliance on the judgments has vehemently argued and contended that the residential house situated at Chandra Layout, Bengaluru, is self acquired property of the father and has further pointed out that father while serving as a Police Officer applied for a vacant site and the BDA executed lease cum sale agreement dated 05.05.1999 and thereafter obtained registered sale deed from BDA. He would also point out that father has constructed a residential house in 1999 and the construction is completed somewhere in the month of October 2005 while he was serving as a Police Officer. He would further point out that first and second floor is constructed in 2008-09 and the constructions are made by father by utilizing savings and retirement funds and therefore, son has no right in the residential house.

6. Reiterating the grounds, he would further vehemently argue and contend that daughter-in-law Sony has no locus to question the order passed by the Assistant Commissioner under Sections 5 and 23 of Senior Citizen Act, 2007 as she is not a party to the proceedings. Therefore, W.P.No.7539/2021 is not maintainable and the same is liable to be dismissed. He has vehemently argued and contended that daughter-in-law's invocation of domestic violence is patently manipulative and the proceedings are initiated only to get over the eviction order passed under the Senior Citizens Act, 2007. He would further point that there are absolutely no allegations against husband Anilkumar by the daughter-in-law and the sole allegations are that it is a shared household as it belongs to the joint family. Therefore, he would contend that the proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 being collusive are liable to be quashed by this Court.

7. Learned counsel placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of Skanda Sharath vs. Assistant Commissioner¹ would point out that even if there is a claim by the rival parties asserting that properties are joint family properties, the Tribunal can order for eviction even in respect of a joint family property. Referring to the partition suit filed by the son, he would point out that the trial Court while considering the application filed under Order 39, at the first

instance, rightly declined to grant injunction having taken cognizance of title documents insofar as residential house at Bengaluru is concerned. 2019 SCC Online Kar 3533

8. Reliance is placed on the judgment rendered by the Delhi High Court in the case of Aditya Gupta vs. Narender Gupta & Others². While taking this Court through the dictum laid down by the Delhi High Court, he would point out that the dispute regarding nature of the property needs to be adjudicated by a competent civil Court and until the rights are decided in a final decree proceedings, it is immaterial whether the property is joint family property and therefore, Balasaheb Patil as a senior citizen is entitled to seek eviction of his son by invoking the provisions of Senior Citizens Act, 2007.

9. Referring to Section 27 of Senior Citizens Act, 2007 he would further contend that jurisdiction of Civil Court stands ousted under Section 27 of Senior Citizens Act, 2007 and therefore, pendency of partition suit in O.S.No.41/2019 will not act as an impediment for a senior citizen to work out efficacious remedy provided under Senior Citizens Act, 2007.

10. He would vehemently argue and contend that in the present set of facts the son cannot set up his wife to defeat the proceedings conferred on a senior citizen under the provisions of Senior Citizens Act, 2007. He would contend that son has set up his wife and proceedings under D.V. Act, 2005 are initiated only to get over the eviction order passed by the Tribunal. He would vehemently counter the respondents' reliance placed on the judgment rendered by the Hon'ble Apex Court in the case of S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Others³. Referring to the dictum, he would point out that the ratio laid down by the Apex Court in the above case are applicable only when provisions of Senior Citizens Act, 2007 are 2020 SCC Online SC 1023 misused to override the proceedings instituted under the D.V. Act, 2005.

11. He would further place reliance on the judgments rendered in the case of Ganesh and Ors. Vs. Sau. Nikita & Another⁴, Prabhakar Mohite vs. State of Maharashtra⁵, Namdeo Babaji Bangde vs. State of Maharashtra⁶ and Anil Kumar Dhiman vs. State of Haryana⁷ and would contend that the Delhi, Bombay and Haryana High Courts have clearly held that even if criminal cases are lodged by wife against in-laws, the eviction order passed under Senior Citizens Act, 2007 was upheld. He would further contend that Domestic Violence proceedings can be maintained only with respect to a shared household. Referring to the principles laid down by the (2021) SCC Online Bom 1290 2018 SCC Online Bom 2775 AIR 2022 Bom 151 AIR Online 2021 P&H 1036 Hon'ble Apex Court in the case of Satish Chander Ahuja vs. Sneha Gupta⁸, he would contend that a shared household has to be understood as a household where husband is entitled to reside. Referring to the title documents relating to residential house at Bengaluru, he would point out that son admittedly residing as a licensee, daughter-in-law would not have a better right and therefore, the proceedings initiated by the daughter-in-law under the provisions of D.V. Act, 2005 are not maintainable.

12. Learned Senior Counsel Sri. Jayakumar S. Patil, while countering the arguments advanced by the learned counsel appearing for the father, mother and daughters primarily raised objection in regard to the maintainability of Crl.P.No.5479/2020 and 4818/2020 seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 under the provisions (2021) 1 SCC 414 of D.V. Act, 2005. He

would contend that the proceedings initiated under the D.V.Act, 2005 being basically civil in nature provides different civil remedies to aggrieved women and therefore, he would contend that the proceedings under DV Act, 2005 being quasi civil nature, the petitioners cannot invoke the provisions of Section 482 of Cr.P.C. and therefore, these petitions are not maintainable and are liable to be dismissed. He would point out that the Domestic Violence proceedings are not amenable to Section 482 proceedings.

13. To buttress his arguments, reliance is placed on the judgment rendered by the Madras High Court and also the ratio laid down by the Hon'ble Apex Court in the case of Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another⁹. Learned Senior Counsel while (2016) 11 SCC 774 bringing to the notice of this Court in regard to the interim arrangement made vide order dated 02.12.2021 would point out that the fact that a comprehensive partition suit is pending, neither the son nor the daughter-in-law can be evicted from the premises. While assailing the order of the Tribunal under Section 23 read with Section 5 of Senior Citizens Act, 2007 learned Senior Counsel would point out that there is no question of transfer of a property and therefore, the Tribunal has no jurisdiction to invoke the provisions of Senior Citizen Act, 2007 and pass the eviction order. The proceedings initiated by the father under the provisions of Senior Citizens Act admittedly does not pertain to grant of maintenance to senior citizens and there is no issue involved in regard to transfer of property and therefore, learned Senior Counsel would point out that petition filed by the father BalasahebPatil against his son seeking eviction under the provisions of Senior Citizens Act, 2007 is not maintainable. He would further point out that order of eviction cannot be enforced against daughter-in-law and minor children when admittedly they are not parties to the proceedings under Senior Citizens Act, 2007 and more particularly when a petition under D.V. Act, 2005 is pending consideration.

14. Learned Senior Counsel has further placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Prabha Tyagi vs. Kamlesh Devi¹⁰. Learned Senior Counsel would further contend that petition under Senior Citizens Act, 2007 is not maintainable when suit for partition is pending consideration before the competent civil Court. On these set of grounds, he would point out that the eviction order passed by the Tribunal in Misc.Petition 2022 SCC Online SC 607 No.69/2019 under Sections 5 and 23 of Senior Citizens Act, 2007 is not sustainable and therefore, the petitions filed by son Anilkumar in W.P.No.7470/2021 and writ petition filed by daughter- in-law and children in W.P.No.7539/2021 deserves to be allowed. He would further request this Court to dismiss the petitions filed under Section 482 filed in Crl.P.Nos.5479/2020 and 4818/2020.

15. Heard learned counsel appearing for the petitioners and learned Senior Counsel appearing for the respondents. I have given my anxious consideration to the material on record and the judgments produced by both the parties.

16. The present case revolves around a prime residential property located in Chandra Layout, Bengaluru. BalasahebPatil asserts that he applied for allotment of plot to the BDA while serving in the police department and subsequently, constructed a house out of his self earnings and service benefits. In view of son filing a partition suit and asserting that the present petition property is an ancestral property, BalasahebPatil (father) filed a petition under Sections 5 and 23 of the Senior

Citizens Act, 2007 seeking eviction order against his son Anilkumar. The Tribunal having recognized the need to protect the rights of BalasahebPatil who is a senior citizen has issued eviction order calling upon his son Anilkumar and his family members to vacate the premises.

17. The daughter-in-law alleging that she has a right to reside in the shared household has filed a petition under Sections 17, 18, 19 and 23 of the D.V. Act, 2005 alleging ill-treatment and domestic discord under the provisions of D.V. Act.

18. Having heard learned counsel on record and learned Senior Counsel appearing for the son and daughter-in-law, one of the primary issue that needs consideration at the hands of this Court is as to whether the proceedings under the D.V. Act, 2005 can be maintained when there is already an eviction order under the Senior Citizens Act, 2007. Another issue that has arisen for consideration is as to whether the father Balasaheb along with his children and his brother can maintain a petition under Section 482 challenging the domestic violence proceedings. This Court is also called upon to examine as to whether the protection and reliefs claimed by the daughter-in-law under the D.V. Act, 2005 can supersede the eviction order granted under the Senior Citizens Act, 2007.

19. The object of Domestic Violence Act:

The Domestic Violence Act aims to provide several remedies to an aggrieved women and protect them against any form of domestic violence as emphasized in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra). However, the primary object of D.V. Act, 2005 does not negate the rights and protection afforded to senior citizens under the Senior Citizens Act, 2007. The pleadings in the partition suit filed by son Anilkumar indicates that he and his wife (Sony-daughter-in-law) are asserting interest in the residential house at Bengaluru since its inception. Para 12 of the plaint would give an indication as to why this dispute has arisen between father and the son and the said pleadings would also enable this Court to assert whether son to overcome an eviction order under the provisions of Senior Citizens Act, 2007 has set up his wife to invoke the provisions of Domestic Violence Act. Para 12 of the plaint is extracted and the same reads as under:

"12. That, as promised by my parents and other family members there was a family arrangement to give the said house situated at Chandra Layout, Bengaluru to me for the preservation of peace, honour of the family and for the avoidance of the litigation and as a security to me, and my wife, later on to my children and with a purpose of establishing and ensuring amenities as good will amongst the relations with a condition that the said house shall continue as 'dwelling house' for me my family and my parents and the said family arrangement was arrived at the time of engagement held at the dwelling house, situated at Chandra Layout Bangalore, a couple of months before my marriage, in the presence of relatives of both the sides (bride & bridegroom). The said family arrangement is final and binding on the parties. That, my marriage with Sony @ Sonia was performed on 27-05-2011."

20. A cursory look at the above culled out paragraph clearly gives an indication that the marriage of Anilkumar with Sony was solemnized with an assurance that the prime residential property at Bengaluru would ultimately go to the son. The material placed on record *prima facie* demonstrates that father (BalasahebPatil) while he was serving as a Police officer applied for a site by submitting an application to the BDA and subsequently, constructed a house. Anilkumar's assertion that a family arrangement is already made prior to the marriage ensuring that the disputed residential house would be preserved for him, his wife Sony and their children and that this arrangement is made for preservation of peace and honour within the family and to avoid litigation further substantiates the father's assertion and claim that the residential house being his self acquired property is entitled for protection and there is a bitterness and acrimony between father and son and also daughter-in-law.

21. Both the parties have cited judgments in support of their contention. This Court has examined the precedents to address the issue raised in the captioned petitions. The ratio laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner(*supra*) has no application to the present case on hand. In the said case, son to resist wife's petition under the provisions of Domestic Violence Act gifted the property to his father and set up his father only to resist the right of a wife to claim right of the residence.

22. The Senior Citizens Act, 2007 provides for the eviction of children or relatives if necessary to ensure the dignity, peace, and maintenance of senior citizens. However, this provision must be harmonized with the D.V. Act,2005 which protects a woman's right to reside in her shared household, ensuring neither Act's provisions are unjustly negated, as highlighted in *Vanita v. Deputy Commissioner & Ors(supra)*. The interpretation of statutory provisions must align with the legislative objectives, as emphasized in *Skanda Sharath v. Assistant Commissioner (supra)*, to protect senior citizens' rights comprehensively. Eviction rules under the Senior Citizens Act, 2007, as noted in *Darshana vs. Govt. of NCT*¹¹, should include daughters-in-law to ensure broad protection for senior citizens. Cases such as *Sachin and another vs. Jhabbu Lal*¹² and *Anil Kumar Dhiman and another vs. State of Haryana and others*¹³ affirm that sons can reside in their father's self-acquired property only with the father's permission, irrespective of their marital status. Further, *Santosh Surendra Patil v. Surendra Narasgonda Patil and others*¹⁴ illustrates that tribunals can nullify property transfers to children who fail to maintain their parents, and *Manmohan Singh v. State of Union Territory, Chandigarh and AIR online 2018 DEL 2358 AIR 2017 DELHI 2017 Crwp.1357-2019 DD. 21.09.2021 Wp.1791/2016 DD 23.06.2017 Others*¹⁵ clarifies that sons living on their father's property as licensees must vacate upon notice of termination, underscoring that they do not have an inherent right to remain. Thus, these legal precedents collectively reinforce the Senior Citizens Act's objective to safeguard senior citizens' rights while balancing it with the protective measures under the D.V. Act, 2005.

23. The Senior Citizens Act, 2007 will prevail over all other Acts, ensuring the protection and well-being of senior citizens. As highlighted in various judgments, the Senior Citizens Act, 2007 allows for the eviction of children or relatives to safeguard the rights of senior citizens. The Court's interpretation consistently emphasizes the harmonious application of both the D.V. Act, 2005 and the Senior Citizens Act, CWP.1365 of 2015 2007, ensuring comprehensive protection for vulnerable

individuals within family dynamic

24. In the present case, there is no dispute between the son and his wife. Therefore, the daughter-in-law is not an aggrieved person under the D.V. Act, 2005. The son is residing as a licensee in his father's house, and the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law in this context. In the present case on hand, the facts are diagonally opposite to the facts in the case cited supra. In the present case on hand, this Court is concerned with father's need for the property to maintain himself and his wife and therefore, senior citizens right over the property holds significant weight especially, considering his retirement and financial needs. Moreover, the son's financial stability as evident by his engineering profession, diminishes the urgency for him to retain possession of the property. Therefore, this Court is of the view that daughter-in-law's invocation of D.V.Act, 2005 seemingly in collusion with her husband, to thwart eviction, lacks merit.

25. In the light of the principles laid down by the Hon'ble Apex Court in the above cited judgment, what emerges is that an aggrieved women is given protection under the provisions of D.V. Act, 2005. The primary object of D.V.Act, 2005, is to give protection to women against any form of domestic violence as outlined in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra).

26. In the present case on hand, the relationship between son and his wife Sony is cordial. The records also reveal that both have engaged a common counsel and are contesting the eviction order secured by BalasahebPatil under the provisions of Senior Citizens Act, 2007.

27. The Hon'ble Apex Court in the case of S.R.Batra vs. Taruna Batra¹⁶ while examining the definition of "shared household" in Section 2(s) of the D.V. Act, 2005 together with the sweep of Section 17 construed that aggrieved wife can claim any household as shared household where she is living or at any point of time lived together with her husband. But it is against all cannons of law that there will be encroachment on the proprietary interest of a third party in the property owned by him/her simply because the aggrieved wife had occasion to live and occupy that property either jointly or singly. Without declaring Section 2(s) as ultra vires, it has been held by the Hon'ble Apex Court that the true meaning of the above provision is that any household in which the (2007) 3 SCC 169 aggrieved wife's husband has a right, title and interest and the wife's right of residence on the ground that there is an ill-treatment is not absolute.

28. If the choice is between two statutes and warrants interpretation, the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

29. From the records what emerges is that daughter-in-law has not placed any material to substantiate that she is an aggrieved person as defined under Section 2(a) of the D.V. Act, 2005. The daughter-in-law also cannot seek protection and assert her right to reside in the disputed residential house by taking benefit of proviso to definition 2(q) of the D.V.Act, 2005.

30. This Court has carefully examined the provisions of both the Acts. In the present set of facts, this Court is more than satisfied that Senior Citizens Act, 2007 has an overriding effect as per Section 3. This Section gives Senior Citizens Act, 2007 a precedent over other inconsistent laws allowing senior citizens to seek eviction of their children or relative, if necessary. The Tribunal's authority to order eviction under Senior Citizens Act, 2007 is further supported by the dictum laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner (*supra*), which clearly underscores the Senior Citizens Act, 2007 broad protective measures for senior citizens.

31. In the light of statutory framework and judicial precedents, this Court is inclined to uphold the eviction order issued by the Senior Citizens Tribunal. The relief sought under the D.V. Act, 2005 by daughter-in-law (Sony) cannot supersede the eviction order as the Senior Citizens Act, 2007 has an overriding statutory authority in the present set of facts. The right created in favour of aggrieved person under the provisions of D.V. Act, 2005 is not an absolute right. The overall facts and circumstances in the present case on hand speaks in volume against the son and daughter-in-law. The son has clearly set up his wife. This Court is more than satisfied that daughter-in-law's invocation of D.V. Act, 2005, seemingly in collusion with her husband and the challenge to the eviction order passed by the Senior Citizens Tribunal by the daughter-in-law on the premise that her petition filed under Sections 17, 18, 19 and 23 of D.V. Act, 2005 is pending consideration is also misconceived.

32. This Court is also more than satisfied that the parties to the proceedings are affluent and are financially sound. Son is a qualified engineer and has sufficient income to support himself and his wife. The effect of playing fraud upon the Court has been considered by the Hon'ble Apex Court in the case of S.P.Chengalvaraya vs. Jagannath¹⁷. The Hon'ble Apex Court observed that "the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court". The Hon'ble Apex Court in the above cited judgment held that in such cases where false cases are filed, the discretion vests with the Court to summarily throw out such person at any stage of the litigation.

AIR 1994 SC 853 Regarding maintainability of 482 petitions seeking quashing of proceedings pending under the provisions of Domestic Violence Act:

33. The present case revolves around the contentious issue of whether petitions filed under Section 482 of the Criminal Procedure Code (Cr.P.C.), seeking to quash proceedings under the D.V. Act, 2005, are maintainable. The respondents, specifically the son and daughter-in-law, have vehemently contested the maintainability of these petitions. Their counsel relies heavily on the Supreme Court's decision in Shyamla Devda and Others vs. Parimala¹⁸, arguing that the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya¹⁹, which supports the respondents' position, was incorrectly deemed per incuriam. According to them, various High Courts, including Bombay, have consistently upheld (2020) 3 SCC 14 (2022) SCC Online Mad 5435 the maintainability of Section 482 petitions against D.V. Act, 2005 proceedings.

34. In considering the arguments presented, this Court has given careful consideration to the facts and legal principles at hand. It finds that the Supreme Court's decision in Shyamlal Devda(supra) primarily focused on a different aspect of law and did not directly address the issue of maintainability of Section 482 petitions challenging proceedings under the D.V. Act, 2005. Hence, reliance placed on Shyamlal Devda(supra) by the respondents' counsel regarding the inapplicability of the Madras High Court's judgment is not persuasive.

35. Contrary to the respondents' contention, the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya(supra) analyzed the specific provisions and nature of relief sought under the D.V. Act, 2005 comprehensively. It concluded that while Sections 17 to 23 of the Act provide civil remedies to aggrieved parties, any challenge to these proceedings should be through a writ petition under Article 227, limited to cases of patent lack of jurisdiction by the lower courts. This interpretation underscores the quasi-civil nature of the remedies provided under the Act.

36. The D.V.Act, 2005 represents a significant legislative effort to address domestic abuse comprehensively, going beyond traditional criminal remedies like Section 498A of the Indian Penal Code (IPC). It aims to empower Courts to issue various civil orders, including protection orders and monetary reliefs, which are distinct from criminal sanctions under the Act.

37. Sections 12, 18, 19, 20, 21, 22, and 23 of the D.V.Act, 2005 delineate these civil remedies, emphasizing the Act's intent to provide relief and protection to victims within domestic relationships. This statutory framework supplements existing laws without derogating from their provisions, as explicitly stated under Section 36 of the Act.

38. Therefore, considering the legislative intent and the specific provisions of the D.V. Act, 2005, this Court finds that petitions filed under Section 482 challenging proceedings under the Act are not maintainable. Such challenges would be more appropriately addressed through a writ petition under Article 227, limited to cases where there is a clear lack of jurisdiction by the lower courts.

39. Conclusion:

(a) In light of the presented facts and relevant legal precedents, it is evident that the Senior Citizens Act, 2007 and the D.V.Act, 2005 must be harmoniously interpreted to ensure that neither Act's provisions are unjustly negated. This case involves the application of the Senior Citizens Act, 2007 to protect the rights and welfare of senior citizens, specifically the father's right to use his property for his maintenance and that of his wife.

(b) Relevance of Provisions and Precedents:
The Senior Citizens Act, 2007 is primarily

designed to protect the rights and dignity of senior citizens, ensuring they can live a peaceful and secure life. The Act empowers tribunals to order the eviction of children

or relatives who fail to maintain their parents. This protection is paramount, particularly in cases where the senior citizen's right to maintenance and peaceful living is at stake, as emphasized in *Aditya Gupta v. Narendra Gupta* (supra) and *Manmohan Singh v. UT Chandigarh*(supra).

The D.V. Act, 2005, on the other hand, is designed to protect women from abuse and harassment within domestic relationships, allowing them to seek various civil remedies. In *Vanita v. Deputy Commissioner & Ors*²⁰, the Court underscored the importance of ensuring that a woman's right to reside in her shared household is not unjustly compromised by the provisions of the SCA.

(c) Distinguishing Principles from Vanita Case:

In *Vanita v. Deputy Commissioner & Ors.* (supra), the son had transferred property to his father to avoid proceedings initiated by his wife under the D.V. Act, 2005. The Court held that the Senior Citizens Act, 2007 and D.V. Act, 2005 must be interpreted harmoniously, ensuring that the woman's AIR Online 2020 SC 897 right to reside in the shared household is not undermined.

(d) In the present case, there is no dispute between the son and his wife, indicating that the daughter-in-law is not an aggrieved person under the D.V.Act, 2005. The son's attempt to nullify the eviction order passed by the tribunal under the Senior Citizens Act, 2007 by having his wife initiate proceedings under the D.V. Act, 2005 is an apparent misuse of the Act's provisions. The son is residing as a licensee in his father's house, and therefore, the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law to challenge the eviction order.

(e) The Court must consider that the Senior Citizens Act, 2007 objective is to protect senior citizens' rights, including their right to maintenance and peaceful living. The son's financial stability and professional standing, as an engineer employed in a private company, further emphasize the necessity for the father to utilize his property for his and his wife's sustenance.

(f) The Court's interpretation consistently emphasizes the harmonious application of both the D.V.Act, 2005 and the Senior Citizens Act, 2007, ensuring comprehensive protection for vulnerable individuals within family dynamics. In the present case, the provisions of the Senior Citizens Act, 2007 will prevail, ensuring the protection and well-being of senior citizens. The father's right to use his property for his maintenance and that of his wife is paramount, and the son's attempt to use the D.V. Act, 2005 to nullify the eviction order is not permissible. The son, residing as a licensee, must vacate the property to ensure the father's right to peaceful living and maintenance is upheld.

(g) A petition filed under Section 482 of the CrPC to challenge the proceedings initiated under the D.V. Act, 2005 is not maintainable, as established in the case of

Arun Daniel &Ors. v. Suganya(supra).

The Court in this case clarified that the reliefs granted under Sections 17-23 of the D.V.Act, 2005 are civil in nature, designed to protect women from domestic violence by providing various civil remedies. These include residence orders, protection orders, and monetary reliefs. If there is a breach of these orders, it can be addressed under Section 31 of the D.V. Act, 2005 which prescribes penalties for such violations.

(h) The use of Section 482 of the CrPC, which allows the High Court to exercise its inherent powers to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, is not appropriate for challenging the merits of D.V.Act, 2005 proceedings. Instead, the remedy lies in filing a writ petition under Article 227 of the Constitution. Article 227 gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This provision can be invoked to challenge D.V. Act, 2005, proceedings only on the grounds of a patent lack of jurisdiction or a manifest error in the exercise of jurisdiction.

(i) In essence, the distinction lies in the nature of the relief sought and the appropriate legal remedy available. Section 482 of the CrPC is meant for addressing the abuse of Court processes and cannot be used to question the civil nature of D.V. Act, 2005 orders. The proper recourse is a writ petition under Article 227, ensuring that challenges to D.V. Act proceedings are based on jurisdictional grounds rather than substantive disputes over the orders themselves. This ensures a clear and orderly process for addressing grievances related to the D.V. Act, 2005 maintaining the integrity of both the Act and the judicial process.

40. In light of the statutory framework and judicial precedents, this Court upholds the eviction order issued by the Senior Citizen Tribunal. The reliefs sought under the D.V. Act, 2007 by daughter-in-law will not supersede the eviction order, as the Senior Citizens Act, 2007 has overriding statutory authority.

41. The Court dismisses WP No. 7470/2021 and WP No. 7539/2021, confirming the validity of the eviction order dated March 30, 2021. The temporary status quo orders granted in April 2021 were vacated, and Anil Kumar and his family are directed to vacate the premises within 30 days from the date of this judgment. Failure to comply with this directive would result in appropriate legal consequences. For the foregoing reasons this Court passes the following order:

ORDER

(i) WP No. 7470/2021 is dismissed.

(ii) WP No. 7539/2021 is dismissed.

(iii) The eviction order dated March 30, 2021, passed by the Senior Citizen Tribunal, is upheld.

(iv) The 482 petitions in Crl.P.No.4818/2020 and Crl.P.No.5479/2020 are dismissed as not maintainable: A writ under Article 227 is only maintainable in cases of patent lack of jurisdiction.

(v) Anil Kumar (petitioner in
W.P.No.7470/2021 and his wife and
children (petitioners in

W.P.No.7539/2021) are hereby directed to vacate the premises within 30 days from the date of this judgment.

Sd/-

JUDGE CA

Sri Chandrashekara B T vs Smt Rajini H J on 26 July, 2024

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NC: 2024:KHC:29448-DB
MFA No.98/2021
C/W MFA No.96/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF JULY, 2024
PRESENT
THE HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.98/2021 (FC)
C/W
MISCELLANEOUS FIRST APPEAL NO.96/2021 (FC)

BETWEEN:

SRI CHANDRASHEKARA B T
S/O LATE SRI THIMMAPPA B T
AGED ABOUT 37 YEARS
R/AT NO.109, PURPLE GARDEN
APTS, VENKATESHPURA, JAKKUR POST
BENGALURU - 560 077
...APPELLANT
(COMMON)
(BY SRI.AKARSH KANADE ADVOCATE A/W
SMT.BIRI MARY, ADVOCATE)

AND:

Digitally
signed by K S
RENUKAMBA
Location: High
Court of
Karnataka
SMT RAJINI H J
D/O JAYASHEELA H
AGED ABOUT 34 YEARS
R/AT NO.32, 4TH FLOOR
KEMPAIAH BLOCK
1ST CROSS, ARAMANENAGAR
BENGALURU - 560 003
...RESPONDENT
(COMMON)
(PARTY-IN-PERSON)

M.F.A. NO.98/2021 IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 28.09.2020 PASSED IN MC NO.4772/2016 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, ALLOWING THE PETITION FILED UNDER SECTION 9 OF THE HINDU MARRIAGE ACT, 1955.

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NC: 2024:KHC:29448-DB
MFA No.98/2021

M.F.A. NO.96/2021 IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 28.09.2020 PASSED IN MC NO.1100/2015 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT, 1955.

THESE MISCELLANEOUS FIRST APPEALS HAVING BEEN RESERVED FOR JUDGMENT ON 03.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, K.S.MUDAGAL. J., DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) These two appeals arise out of the common judgment and order/decrees dated 28.09.2020 in M.C.Nos.1100/2015 and 4772/2016 passed by the Prl. Judge, Family Court, Bengaluru.

2. The appellant in these cases was the petitioner in M.C.No.1100/2015 and respondent in M.C.No.4772/2016. The respondent in these cases was the respondent in M.C.No.1100/2015 and petitioner in M.C.No.4772/2016. M.C.No.1100/2015 was filed by the appellant against the respondent under Section 13(1)(ia) of Hindu Marriage Act, 1955 (for short 'the Act') seeking decree for dissolution of marriage on the ground of cruelty. The present respondent NC: 2024:KHC:29448-DB filed MC No.4772/2016 against the appellant under Section 9 of the Act seeking decree for restitution of conjugal rights.

3. The marriage of the appellant and respondent was solemnized on 13.11.2011 at Unity Hall, Thirthahalli as per the Hindu rights. The marriage was subsequently registered before the Sub Registrar of Marriages, Sagar. During their conjugal life the couple were blessed with a son by name Vihan on 19.02.2013. Appellant is a Mechanical Engineer and at the time of marriage was employed at Bengaluru. Subsequently he is working in Pune. Respondent is a civil engineer. At the time of marriage, she was also employed in Bengaluru.

4. In M.C.No.1100/2015 decree for dissolution of marriage was sought alleging following acts of cruelty:

i) That the respondent was abuser since the beginning of the marriage itself. Being the eldest son, the appellant had the duty to help his parents and family. However, that was disliked by the respondent. Whenever he helped his parents, she used to

become violent and assault him, abuse him, his parents and family members in vulgar language. During nights she used to shout at him hit, pinch and punch him.

NC: 2024:KHC:29448-DB

ii) In June 2012 he lost his father. Therefore, he used to visit his mother regularly at Thirthahalli. That was also objected by the respondent. She wanted the appellant to cut all his connection with his mother and younger brother.

iii) After postnatal care respondent refused to return to matrimonial home. However, after some time, she returned to their house in Bengaluru posing several conditions. On the request of his mother on 21.11.2013 the appellant rendered financial assistance of Rs.2,00,000/- to his mother. On learning about the same on 23.11.2013 during night the respondent abused the appellant, in the fit of anger she assaulted him with kitchen knife and fork on his head, shoulder and back causing him severe injuries. On taking treatment in K.C.General hospital, Bengaluru he filed complaint against her. As a counter blast to the same, she filed complaint against him, his brother and friend before the Vyalikaval Police Station. Further she filed a false dowry harassment complaint before the Halasurugate Women Police Station against the appellant, his parents and relatives. She never treated him gracefully as a spouse. Her conduct has subjected him to immense cruelty NC: 2024:KHC:29448-DB making it impossible to continue the marital life. Hence he be granted decree for dissolution of marriage.

5. The respondent contested the petition denying the allegations of cruelty and the instances alleged by him. She claimed that at the time of marriage, cash of Rs.5,00,000/-, gold chain, gold ring and bracelet were given to the appellant as dowry. During her pregnancy also the appellant despite having sufficient means neglected to take care of her. Four to five months after marriage, the appellant at the instigation of his brother, mother and maternal uncle subjected her to physical and mental cruelty in connection with demand for additional dowry. The appellant did not even meet the domestic exigencies. The advise of elders did not yield any result. The allegation of assault of 23.11.2013 was denied. It was contended that when she did not yield to the demand of the appellant for dowry of Rs.10,00,000/- the appellant himself at the instigation of his mother and brother assaulted her seriously. Since the child was sleeping she could not file the complaint immediately. To overcome his misdeeds he filed the complaint against her. After the incident he left home and did NC: 2024:KHC:29448-DB not return and deserted her and the child without any reasonable cause. Hence she sought dismissal of the petition.

6. On the same grounds she filed MC No.4772/2016 seeking decree for restitution of conjugal rights and that petition was opposed by the appellant reiterating the grounds taken in M.C.No.1100/2015.

7. The Trial Court consolidated both the matters and recorded common evidence in M.C.No.1100/2015. The appellant was examined as PW.1 and on his behalf Exs.P1 to P11 were marked. The respondent was examined as RW.1. On her behalf Ex.R1 to R23 were marked. The trial Court on hearing the parties by the impugned judgment and order dismissed M.C.No.1100/2015 holding that the cruelty alleged was not proved, allowed M.C.No.4772/2016 and ordered for

restitution of conjugal rights holding that the respondent has proved that the appellant without reasonable excuse has deserted her. Challenging the said judgment and decree, the above appeals are filed.

8. Before this Court the parties have filed several interim applications. Particulars of the pending applications are as follows:

NC: 2024:KHC:29448-DB Sl. IA No. Filed by Relief In MFA No.

1. IA Appellant/husband Grant of stay No.1/2020 of operation judgment and decree
2. IA Respondent/wife Permanent No.1/2024 alimony of Rs.3.5 crore
3. IA Appellant/husband To summon No.2/2024 the Manager & HR of BBR Common India Pvt Ltd (MFA No.)
4. IA Appellant/husband To summon C/W MFA No.3/2024 the Manager, No.96/2021) ICICI Bank to furnish the entire bank statement Submissions of Sri Akarsh Kanade, learned counsel for the appellant:

9. The Trial Court in appreciating the evidence adopted the standard of proof of fact beyond reasonable doubt expected of in criminal trial, whereas in civil cases the proof required is preponderance of probability. The respondent in her pleading itself admitted the injuries suffered by the appellant in the incident dated 23.11.2013. But the Trial Court disbelieved the injuries solely on the ground that wound certificate was not proved. The Trial Court failed to note that the respondent NC: 2024:KHC:29448-DB claimed that they were self inflicted injuries. To overcome her overt acts she filed complaint after 2 days against the appellant, his brother and friend claiming that they were the assailants. On trial they were acquitted. The Trial Court failed to note that after filing such false complaint, the respondent further implicated the appellant and his family members in dowry harassment case, though her evidence itself shows that the appellant had funded her and her family members on several occasions. Such cases filed against the appellant and his family members are being prolonged. Similarly, the Trial Court committed error in finding loopholes in payment of Rs.2,00,000/- to his mother just on the ground that the account extracts etc were not produced. The tenor of the defence of respondent itself shows that she alleged that the appellant's brother was squandering money in serial productions etc. The Trial Court's finding on condonation of cruelty based on Exs.R1 to R10 is erroneous. Such photos were taken for the sake of the son, that does not amount to condonation of cruelty. So far as application for permanent alimony, the respondent though gainfully employed has suppressed her employment in the affidavit filed in support of her claim. That goes to show that she stoops to any extent to NC: 2024:KHC:29448-DB make wrongful gain. To show that she is gainfully employed the appellant has produced bank statement by way of additional evidence. If the employer of the respondent and the concerned bank are summoned, the truth comes to light. For that purpose, the appellant has filed IA Nos.2 and 3 of 2024. Such additional evidence is required for complete adjudication of the matter. As the appellant had no access to those documents and came to know about them during the pendency of the appeal, those

applications be allowed. With an intention to harass the appellant, the respondent is approaching several forums, viz., under the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short), under Section 125 Cr.PC; by way of applications under Sections 24 and 25 of the Act etc., though she could make all such claims in the proceedings under Sections 24 and 25 of the Act. In different courts different interim orders were passed. Based on that she is filing execution petitions before several Courts driving him to attend the Courts, hence his work is also being disrupted. If the petition for divorce is dismissed, then permanent alimony cannot be granted.

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10. In support of his submissions, he relies on the following judgments:

- i) Jayachandra vs. Aneel Kaur¹
- ii) Badri Prasad vs. Urmila Mahobiy²

Submissions of respondent/party in person:

11. The appellant failed to prove the grounds of cruelty set up by him. Exs. R1 to R10 admitted by him show that even during the pendency of the proceedings he was meeting her and spending time with her. Therefore, the trial court was justified in holding that he has condoned the cruelty. The appellant, despite having sufficient means, has failed to pay maintenance to the child and herself. She has no source of income as she has given up her employment to look after the child and to attend to all these cases. Despite she filing Ex.Case No.111/2020 to execute the decree for restitution of conjugal rights, he has not complied the same. But he challenges before this court the interim maintenance awarded. Of late it is discovered that the appellant's brother has conspired with some other persons to commit her murder. Now it has become (2005)² SCC 22 AIR 2001 MP 106

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NC: 2024:KHC:29448-DB unsafe for her to live with the appellant. Thus she seeks permanent alimony of Rs.3.5 crores. She opposes the documents produced by way of additional evidence and summoning of the witnesses.

12. On hearing both side and on examining the materials on record, the questions that arise for consideration are:

- i) Whether the impugned judgment and order of dismissal of the petition of the appellant for divorce and granting decree to the respondent for restitution of conjugal rights is sustainable?

ii) Whether the respondent is entitled to permanent alimony of Rs.3.5 crores as claimed in IA No.1/2024?

iii) Whether IA Nos.2 and 3 of 2024 filed by the appellant for adducing additional evidence deserve to be allowed?

Analysis

13. There is no dispute that the marriage of the appellant and respondent was solemnized on 13.11.2011

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NC: 2024:KHC:29448-DB according to the Hindu rights and they have a son born on 19.02.2013. It is also not disputed that in the year 2012, after the marriage of the parties, the father of the appellant passed away and the appellant has a widowed mother and younger brother who reside in the village. It is also not disputed that on 24.11.2013 the appellant filed complaint as per Ex.P3 against the respondent before Vyalikaval police alleging that on 23.11.2013 at 3.00 p.m. taking objection to payment of money by him to his mother, respondent assaulted him with knife, fork and caused injuries. Based on the said complaint, FIR Ex.P4 was registered for the offences punishable under Sections 324 and 506 of IPC. It is not disputed that after investigation, said Police have filed chargesheet against the respondent for the offences punishable under Sections 324 and 506 of IPC which is pending in C.C No.32133/2014 before the VIII Additional Chief Metropolitan Magistrate, Bangalore and she is facing trial in the said case.

14. After the appellant filing the said complaint against her, on 26.11.2013 i.e., after two days, the respondent filed complaint as per Ex.P6 against the appellant, his younger brother and friend before Vyalikaval Police. Based on the said

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NC: 2024:KHC:29448-DB complaint, said police registered FIR as per Ex.P7 and on investigation filed charge sheet as per Ex.P8 against them for the offences punishable under Sections 341, 323, 504, 506 read with Section 34 IPC. Learned VIII Additional Chief Metropolitan Magistrate on taking cognizance registered the said case in C.C. No.32150/2014 and on trial, by the judgment dated 29.09.2022 acquitted the accused.

15. Soon after filing of the complaint Ex.P6, the respondent on 18.12.2013 filed another complaint as per Ex.P9 against the appellant, his mother, younger brother, uncle and his wife alleging dowry harassment. Based on the said complaint, Halasurugate police registered FIR as per Ex.P10 against them and on investigation filed chargesheet as per Ex.P11 for the offences punishable under Sections 498A and 506 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The said case was registered in C.C.No.20754/2014. Both C.C.No.32133/2014 and C.C. No.20754/2014 are still pending and appellant, his family members and friend are facing trial in the said cases.

16. Further, respondent has filed complaint in Crl. Misc. No.23/2014 before MMTC-II, Bengaluru against appellant under

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NC: 2024:KHC:29448-DB the provisions of the DV Act. In the said case Magistrate awarded interim maintenance of Rs.5,000/- . Respondent challenged that order before Fast Track Court, Bangalore City in Crl.A.No.581/2014. The said appeal was allowed in part on 05.03.2015 enhancing the interim maintenance to Rs.20,000/- per month. In M.C.No.1100/2015 on the application of the respondent by order dated 21.03.2019, the Trial Court awarded interim alimony of Rs.25,000/- per month in addition to Rs.20,000/- awarded in the DV Act proceedings. That order was confirmed by this Court on 24.07.2019 in W.P.No.15952/2019 filed by the appellant.

17. In addition to the above proceedings, on 18.12.2020 the respondent filed Crl.Misc.No.480/2020 against the appellant under Section 125 Cr.PC before the Family Court claiming maintenance of Rs.1,50,000/- per month for her and litigation expenses of Rs.1,00,000/-. Respondent has filed Execution Petition Nos.197/2023, 111/2020 before the Family Court alleging that the arrears of maintenance is not paid. She also filed Ex.Case No.213/2023 before the MMTC-II, Bengaluru claiming that the interim maintenance awarded in DV Act

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NC: 2024:KHC:29448-DB proceedings is not paid. In the execution case, the warrants for attachment of salary, non bailable warrants are being issued.

18. The above facts and circumstances go to show that the parties are entrapped in a web of litigations. The appellant sought decree of divorce on the ground that respondent has subjected him to physical and mental cruelty, therefore it is impossible for him to continue the marital life. The following were the acts of cruelty alleged:

- i) Respondent was contemptuous towards appellant, his widowed mother and brother. She wanted to separate him from them.
- ii) She did not tolerate he lending financial assistance to his mother, brother and on that ground she was employing abusive language against them.
- iii) Whenever he lends money to his mother, she was assaulting him inside, outside house and in front of his relatives.

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NC: 2024:KHC:29448-DB

iv) She subjected him to cruelty by filing multiple cases, false dowry harassment case and criminal cases against him and his family members.

19. Respondent denied the same. Though the judgment of the Trial Court runs into 70 pages, up to page No.44, it consists of only repetition of the pleadings, arguments of the Counsel on both sides and the judicial precedents referred to by them. The reasoning of the Trial Court starts from page No.44 Para 22 of the judgment. The Trial Court has considered only two grounds of cruelty alleged by the appellant. First one is regarding respondent's reaction for the appellant transferring Rs.2,00,000/- to his mother. Second one is regarding allegation of assault by the respondent on 23.11.2013. The Trial Court disbelieved the contention regarding transfer of the amount on the ground that, at one breath appellant states that he transferred the money to his mother and at another breath he stated that he transferred money to the account of his younger brother, but he has not produced any records like bank statement or transfer details and in his complaint Ex.P3, he has not stated about transfer of Rs.2,00,000/-.

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NC: 2024:KHC:29448-DB

20. Trial Court disbelieved the incident dated 23.11.2013 on the ground that there was delay of 26 hours in appellant filing the complaint, he had suffered simple injuries, he did not produce the wound certificate and only produced the photographs Ex.P5 (a to f), the Doctor who treated the appellant has not registered the MLC case and FIR was not registered on the medico legal intimation of the doctor. The Trial Court further says that the appellant has not examined his friend to corroborate his evidence. The Trial Court further states that bloodstained clothes of the appellant and the photos produced in this case were not seized by the Investigating Officer.

21. The reading of the entire judgment shows that the Trial Court proceeded with the matter as if it is sitting in trial in CC No.32133/2014. In doing so, the Trial Court failed to note that such observations prejudice the trial of the case in C.C.No.32133/2014. Strangely, the Trial Court says that the contents of the charge sheet have not been proved before it. The Trial Court lost sight of the fact that degree of burden of proof in civil cases and criminal cases are different. In criminal case, prosecution is required to prove the charges beyond all

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NC: 2024:KHC:29448-DB reasonable doubts and burden of proof is heavy. Whereas in the civil case, the party asserting certain facts has to lead evidence to probabalise his contention and the evidence has to be weighed on the principle of preponderance of probability. Therefore, the Trial Court was required to see whether the appellant had suffered such injuries at the given date, time and place and whether he probabilised his case that such injuries were inflicted by the respondent.

22. Respondent in para 36 of her statement of objections itself contended that the appellant first assaulted her and thereafter he inflicted injuries himself on his body and filed a false complaint. She

further claimed that due to the injuries suffered by her, sensing threat to the life and limb of herself and the child, she filed complaint in Crime No.224/2013. It is settled position of law that admission in pleading has higher evidentiary value. In the light of such admission in the pleading about the appellant suffering injuries, the Trial Court was not justified in disbelieving such injuries only on the ground that MLC intimation was not given, the bloodstained clothes were not seized etc. In such cases, burden shifted to the respondent to prove that they were self inflicted injuries. But, there was

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NC: 2024:KHC:29448-DB not even any suggestion to PW.1 in his cross examination stating that he inflicted those injuries on himself.

23. In para 36 of the objections, she claimed that the appellant assaulted her. In her complaint Ex.P6, she implicated the appellant, his brother and friend. Admittedly based on such complaint, chargesheet was filed in the said case. The appellant, his brother and friend were tried in CC No.32150/2014 based on such charge sheet and acquitted on 29.09.2022. The copy of the said judgment is produced before this Court. Since the same is between the parties interse and not disputed, having regard to Sections 57 and 58 of the Indian Evidence Act, 1872, the said document can be looked into. Reading of the said judgment shows that the said Court held that complaint was filed by the respondent as a counter blast to the complaint of the appellant. Learned Magistrate even disbelieved her version regarding dowry harassment, accused Nos.2 and 3 criminally intimidating her and the appellant assaulting her. In view of her admission regarding suffering injuries, the photographs Ex.P5 (a to f) can be looked into. Many of the injuries are found on the back of the shoulder and

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NC: 2024:KHC:29448-DB neck, it goes hard to accept that he could have inflicted those injuries on himself.

24. So far as observation of the Trial Court that the appellant has not proved the monetary transaction between him and his mother, all along the case of the respondent is that the appellant was harassing her at the instigation of his brother and mother and secondly that all of them subjected her to cruelty demanding dowry. In the cross examination of PW.1, she suggests that his younger brother was spending huge amount for making TV serial. That itself indicates that she was watching the financial affairs of the appellant, his brother and his parental family. In para 16 of the cross examination dated 07.02.2020 the respondent herself suggested to PW.1 that he transferred Rs.2,00,000/- to his mother through the account of his brother. She herself suggests that differences between himself and the respondent started after transferring the said amount. He denied that suggestion and volunteered that differences were there from the beginning. She suggests to him that he was suffering from Obsessive compulsive disorder without any attempt to prove that, though those suggestions were denied by him. Probably to overcome the incident of

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NC: 2024:KHC:29448-DB assault, she herself suggested to PW.1 that she has the disorder of walking in the night. Under such circumstance, conclusions of the Trial Court that clashes between the couple due to transfer of money by the appellant for the benefit of his mother was not proved, is contrary to respondent's own suggestions.

25. The contention of the appellant is that the respondent was always avaricious and expecting lavishness and he gave her and her family members, money and jewellery, etc., despite that she filed false dowry harassment case against him and his family members. To substantiate that, he has produced before this Court the depositions of the respondent in Crl. Misc No.23/2014. Since said proceeding is between same parties and not disputed, that can be looked into more particularly as per Section 14 of the Family Courts Act the Court can adopt its own procedure. In Page 18 of the said deposition, to the suggestion that she was spending her salary for her own purpose, respondent stated that she was depositing that to her RD account and remaining amount she was spending for the household. She admits that RD was of Rs.2,00,000/- . To the suggestion that the appellant was

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NC: 2024:KHC:29448-DB depositing the amount in the RD account, she says sometimes he used to deposit. She admitted the suggestion that the appellant deposited Rs.1,60,000/- in the account of her elder sister, but claimed that the appellant withdrew the said amount. She did not prove the said contention. In pages 18 and 19 of the said deposition, she admitted that on 03.10.2012 the appellant deposited Rs.1,00,000/- to her account and on 10.11.2012 he deposited Rs.20,000/- . Though she claimed that he took that back, there was no proof for the same. She admitted that the appellant deposited in all Rs.6,16,500/- to the accounts of herself, her elder sister and grandfather. But claimed that such remittances were made for paying the site value, tractor hiring charges, rent, water and electricity bill, again without any proof for such contention. When she was confronted with the bank statement to the effect that amounts were transferred from the account of the appellant to her account, though she admitted her name in such entries, later evaded saying that unless she cross checks that with her account, she cannot admit that. In page 22 and 23 of the deposition when she was confronted with several payments, she did not deny that but she evaded saying that she has to cross verify. However, she admitted that on 03.10.2011 the

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NC: 2024:KHC:29448-DB appellant transmitted Rs.50,000/- and again Rs.50,000/- through NEFT to her account. In her deposition dated 29.06.2022 she admits that the appellant has opened a company in her name. In para 7 of the cross examination of PW.1 in MC No.1100/2015 before the Trial Court, respondent suggested to PW.1 that appellant voluntarily and happily paid jewellery worth Rs.5,00,000/- to her. Such payments/suggestions create doubt about the respondent's allegation that the appellant and his family members subjected her to cruelty, demanding dowry or additional dowry.

26. The appellant has also produced the order sheet dated 02.11.2014 in Crl. Misc. No.23/2014. In that learned MMTC II observed about the conduct of the respondent as follows:

"When the petitioner was cross examined, she argued before the Court and she shouted at the Court in the board and after repeated warning, she continued to shout in the open Court. Hence, case was adjourned. She even refused to sign the cross examination. The same was witnessed by advocate by name Sri Devi Prasad. The signature is obtained in the order sheet. For further cross examination of

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NC: 2024:KHC:29448-DB PW.1 and memo of calculation from the respondent side, call on 26.12.2023."

If such is the conduct of the respondent before a Court of law, one can imagine how she would have conducted with the appellant within four walls of the house.

27. The above facts and circumstances go to show that the respondent implicated the appellant, his brother and friend in a case of assault by making false allegations. The above discussed evidence further probabilizes the contention of the appellant that the respondent has implicated him and his family members in different cases, to derive sadistic pleasure. The finding of the Trial Court that the allegations of cruelty were not proved is totally unsustainable.

28. Another ground of rejection of petition for dissolution of marriage is that the appellant has condoned the cruelty, if any, by taking the respondent to several places as shown in the photographs, Exs.R1 to R10. The basis for such opinion of the Trial Court regarding condonation of cruelty is deposition of PW.1. In para 20 of the cross examination, the photos Exs.R1 to R8 were confronted to PW.1 and he admitted that he is depicted in the said photographs with the respondent

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NC: 2024:KHC:29448-DB and his son, but he denied that he had taken respondent to Ooty and Mysore for a trip. Though in para 21 of his cross examination he admitted the photographs in Exs.R9 and R10, he clearly stated that those photographs were taken soon after the marriage of himself and the respondent. In para 20 and 21 of the cross examination he clearly denied the suggestion that though he is interested to live with the respondent, at the instigation of some other persons he has filed false case against her.

29. It is to be noted that in none of the photographs in Exs.R1 to R8 the appellant is found exclusively with the respondent. It is the contention of the appellant that to spend time with his child, he had to call the respondent and she used to accompany the child. Therefore, those photographs cannot be called as condonation of cruelty. Ex.R21 the call detail records were produced to contend that the appellant was frequently calling the respondent, therefore, there is condonation of cruelty. Even in that regard in the cross examination of RW.1 dated 13.03.2020 the appellant suggested that he used to call the respondent to speak to the child. She does not dispute the said suggestion, but she added that

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NC: 2024:KHC:29448-DB appellant also spoke to her. Respondent herself produced the deposition of the appellant recorded in CC No.32133/2014 (Ex.R.22) which was recorded on 10.08.2018, 06.10.2018 and 23.11.2018. It is also not disputed that the appellant has not withdrawn any of the criminal cases filed on his complaint. The deposition Ex.R22 nowhere indicates that the appellant in any way condoned the cruelty. Admittedly, the appellant has filed G & WC No. 271/2023 before the Principal Judge, Family Court, Bangalore seeking custody of the child. The aforesaid facts and circumstances show that the appellant had the compulsion of permitting the respondent to accompany him and the child for the sake of facilitating his meeting with his son. Such acts cannot be called condonation. An act of condonation, should be out of freewill and intelligible acceptance. But the facts of this case show that under the urge of meeting his son, he was forced to permit the respondent to accompany them. The Trial Court without appreciating the evidence holistically, jumped to the conclusion that the photographs show the condonation of cruelty as required under Section 23(1)(b) of the Act. Condonation of cruelty presupposes that there was cruelty. The Trial Court first holds that cruelty was not proved, then holds that cruelty is condoned which is mutually contradictory.

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NC: 2024:KHC:29448-DB

30. It is material to note that, if at all the respondent wanted interim or permanent alimony, since the matrimonial proceedings were pending, she could have sought consolidated claim in the same case. But she goes on filing multiple proceedings like under the DV Act, seeking maintenance and execution petitions before different Courts etc. It is no doubt true that when the law provides, the parties have the right to seek remedies, but that should be bonafide. Approaching multiple Courts for maintenance though there was scope to seek maintenance in a consolidated way in the matrimonial case itself, obviously shows that she wanted to drive the appellant to run around several Courts at the cost of his profession and personal life and that is the calculated acts of cruelty. It is no doubt true that generally Courts are compassionate towards women considering the fact that they are more prone to exploitation. However, the Courts should also take cognizance of the fact that good number of times pro- woman laws are being misused to harass not only their spouses but even their family members. In the light of the aforesaid facts and circumstances, this Court has no hesitation to hold that the respondent has subjected the appellant to cruelty entitling him decree for divorce. Consequently, the decree of

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NC: 2024:KHC:29448-DB restitution does not sustain as appellant has sufficient reasons to stay separately from the respondent on the ground of cruelty.

31. The above discussed evidence goes to show that within two years of marriage the appellant has faced great turbulence in his life due to conduct of the respondent. The appellant and his family

members are dragged to the Court in multiple cases, in one of which they were apparently acquitted. Before this Court, the respondent produced certain records to claim that the appellant and his brother conspired with other persons to commit her murder and therefore criminal case is registered. Though she claims that chargesheet is filed in that case, only the copy of the FIR of Aldur Police Station, Chikmagalur District is produced. Even in that FIR, the appellant is not shown as the accused. Therefore, at this stage, this Court only on the basis of respondent's contention and FIR cannot jump to the conclusion that they are guilty of such offences.

32. The Trial Court to grant decree of restitution of conjugal rights states that appellant did not whisper anything in his evidence to counter the allegations made in the said petition

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NC: 2024:KHC:29448-DB namely, MC No.4772/ 2016. The Trial Court itself consolidated both the petitions and recorded the common evidence in MC No.1100/2015. The allegations and counter allegations in both the cases were common and they were addressed in the affidavit in lieu of his chief examination. Therefore, the Trial Court was patently incorrect in saying that the appellant did not meet the allegations made in MC No.4772/2016 in his evidence.

33. The Hon'ble Supreme Court in Jayachandra's case referred to supra has held that the cruelty, a ground for dissolution of marriage, though not defined in the Act, can be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental or as to give rise to a reasonable apprehension of such danger. It was also held that the question of mental cruelty has to be decided in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. It was held that cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. It was further held that the enquiry must begin

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NC: 2024:KHC:29448-DB as to the nature of cruel treatment and impact of such treatment in the mind of the spouse whether caused reasonable apprehension that it would be harmful or injurious to live with the other and ultimately it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. Therefore, the said judgment is aptly applicable.

34. For the aforesaid reasons the impugned judgment/order/decrees of dismissal of the petition of the appellant for divorce and allowing the petition for restitution of conjugal rights are liable to be set aside. Reg. Permanent Alimony (IA.Nos.1/2024/ 2/2024 and 3/2024).

35. IA No.1/2020 is for stay of the impugned judgment and decree. Since the main matters are being disposed of, that does not survive for consideration. IA No.1/2024 is filed by respondent/wife claiming permanent alimony of Rs.3.5 crores from the appellant. The appellant has filed IA No.2/2024 to summon the Manager and HR of BBR India Pvt. Ltd. Company to furnish the

employment particulars of the respondent in the said company and bank details to which her salary is being

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NC: 2024:KHC:29448-DB credited. IA No.3/2024 is filed to summon the Manager of ICICI Bank, Vyalikaval Branch to furnish statement of account of respondent bearing No.272601509109 for the period from 01.04.2021 to 31.12.2023.

36. The applications are opposed by the parties. In the affidavit of assets and liabilities filed by the respondent in support of IA No.1/2024 she claimed that she is unemployed. In clause (F) of her affidavit regarding her assets and liabilities in terms of the judgment of the Hon'ble Supreme Court in Rajnesh vs. Neha³ the respondent has claimed that she is not employed, she has no other source of income and she has mentioned those columns as 'nil', 'not applicable' etc. She claimed that her father is dependent on her and she has no other income. She has produced statement of account pertaining to Account No.007801529255 with ICICI Bank from 01.01.2021 to 30.12.2021 and SBI Bank Account particulars. Whereas in the affidavits of the appellant filed in support of IA Nos.2/2024 and 3/2024 and in his statement of objections to IA No.1/2024 he contends that respondent is a BE graduate and she is employed with the Company called BBR India Pvt. Ltd. as (2021)² SCC 324

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NC: 2024:KHC:29448-DB Design Engineer and drawing salary of Rs.40,000/- per month. He further contends that the respondent has another Account No.272601509109 in ICICI Bank, Vyalikaval Branch and her salary is credited to the said account. He claims that the respondent has deliberately suppressed the said fact which amounts to perjury and playing fraud on the Court. Therefore, he seeks to summon that employer and the Bank Manager to produce the particulars of employment and bank account respectively. Respondent filed counter to those applications alleging the said evidence is irrelevant and applications are dilatory tactics to cause hardship to her etc. But in the entire statement of objection, nowhere she has denied such employment.

37. Section 25 of the Act requires the Court to have regard to the income and property of the respondent, conduct of the parties and other circumstances of the case to arrive at the quantum of alimony to be granted. Needless to say that while granting permanent alimony, the Court has to take into consideration the affidavit filed by both the parties regarding the assets and liabilities and the documents filed in support of them. The appellant in para 13 of his statement of objection to

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NC: 2024:KHC:29448-DB IA No.1/2024 in terms of the judgment of the Hon'ble Supreme Court in Rajnesh's case referred to supra, states that the respondent is a graduate in BE Civil engineering, she is employed with BBR India Pvt. Ltd. as design engineer and earning Rs.40,000/- per month. The respondent claims that she was employed with the said company, but she has resigned in 2012.

Thereby her employment in the said company was established and the burden was on her to prove that she is no more in the employment of the said company. Except for producing copy of the email alleged to be her resignation letter dated 23.07.2012, she did not examine the said employer to show that she is no more in the said employment. Whereas the appellant has produced summary of statement of Account No.272601509109 said to be standing in the name of the respondent with ICICI Bank. The same pertains to the period between 01.04.2021 to 03.11.2022. As per the said document in each month a sum ranging between Rs.36,604/- to Rs.36,309/- is periodically credited from the account of BBR India Pvt. Ltd.

38. Having regard to the material on record, it cannot be said that the contention of the appellant with regard to

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NC: 2024:KHC:29448-DB employment and income of the respondent is totally vexatious. This Court is satisfied that the enquiry needs to be conducted on the same and for that purpose the matter needs to be remanded to the Trial Court to decide on the permanent alimony on recording the evidence.

39. Admittedly, the award of interim maintenance of Rs.20,000/- in the DV Act proceedings and interim maintenance of Rs.25,000/- awarded by the Family Court have attained finality. The appellant shall go on paying the said sum every month till issue of permanent alimony is decided by the Trial Court. To avoid multiple execution petitions before different Courts and dispute with regard to sum due, the appellant shall deposit the interim alimony before the Trial Court on or before 10th of each calendar month. The applications are being disposed of accordingly. Hence the following:

ORDER

- i) MFA.No.98/2021 and MFA.No.96/2021 are allowed.
- ii) The impugned common judgment and order/decrees dated 28.09.2020 in MC Nos.1100/2015 and 4772/2016 on the file of Principal Judge, Family Court, Bangalore are hereby set aside.

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NC: 2024:KHC:29448-DB

- iii) The petition in MC No.4772/2016 is hereby dismissed.
- iv) The petition in MC No.1100/2015 filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is hereby allowed.

v) The marriage of the appellant/petitioner and respondent solemnized on 13.11.2011 in Unity Hall, Thirthahalli is hereby dissolved.

vi) IA Nos.2/2024 and 3/2024 filed by the appellant to summon the witnesses/documents are hereby allowed.

vii) IA No.1/2024 filed by the respondent for permanent alimony is hereby remanded to the Trial Court.

viii) The parties are permitted to lead evidence on IA No.1/2024 in addition to summoning of the witnesses/documents sought in IA Nos.2/2024 and 3/2024.

ix) Till the disposal of IA No.1/2024 by the Trial Court, appellant/petitioner shall go on paying Rs.45,000/-

per month towards the maintenance of the
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NC: 2024:KHC:29448-DB

respondent and son of the couple. The said sum is inclusive of the maintenance awarded in DV Act proceedings and her claim under Section 125 Cr.P.C. if any.

x) The appellant shall deposit the arrears of maintenance, if any, at the above rate before the Trial Court within four weeks from the date of this order.

xi) To avoid filing of multiple execution petitions before multiple forums, the appellant shall go on depositing the interim alimony at the above rate before the trial Court on or before 10th of each calendar month. In case of default, the respondent shall file execution petition only before the Trial Court and not in the Courts of DV Act proceedings and proceedings under Section 125 Cr.P.C. as the same would save the time, resources of the parties and Courts.

xii) To avoid further delay, the parties are hereby directed to appear before the Trial Court on 29.08.2024 without any further notice.

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xiii) If any of the parties fail to appear, the Trial Court is at liberty to proceed in accordance with law.

xiv) The Trial Court shall record the evidence and dispose of IA No.1/2024 within 4 months from the date of appearance of the parties.

xv) IA No.1/2020 for stay stood disposed of.

Sd/-

(K.S.MUDAGAL) JUDGE Sd/-

(VIJAYKUMAR A. PATIL) JUDGE AKC

Sri Harish Kumar N M vs Smt Asfia Hussaini on 20 August, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:33404
CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 2233 OF 2024
(439(2)(Cr.PC)/483(3)(BNSS)
C/W
CRIMINAL PETITION NO. 10377 OF 2023
CRIMINAL PETITION NO. 13275 OF 2023
IN CRL.P.NO.2233 OF 2024
BETWEEN:

1. SMT ASFIA HUSSAINI
W/O SRI HARISH KUMAR N M
AGED 39 YEARS,
CURRENTLY R/AT 402 B SRINIDHI RESIDENCY,
APARTMENTS, 364/2, 4TH FLOOR,
BASAVANAGAR MARATHAHALLI COLONY,
BENGALURU-560037.

...PETITIONER

Digitally signed
by KHAJAAMEEN (BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
L MALAGHAN
Location: High SRI. VENKATESH SOMAREDDI, ADVOCATE)
Court Of
Karnataka AND

1. STATE OF KARNATAKA
BY RAMAMURTHY NAGAR POLICE
STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560001.

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NC: 2024:KHC:33404

CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

2. SRI. HARISH KUMAR N M
AGED ABOUT 41 YEARS,
S/O LATE NANDANAHALLI MAHESH,
PRESENTLY RESIDING AT 673,
1ST MAIN, BANNIMANTAP B LAYOUT,
MYSORE-570015.

...RESPONDENTS

(BY SMT: ANITHA GIRISH, HCGP FOR R1;
SRI. SIDDARTH SUMAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 439(2) CR.P.C.,
PRAYING TO CANCEL THE BAIL GRANTED TO RESPONDENT
NO.2 AS PER ORDER DATED 23.10.2021 AND ALSO THE ORDER
DATED 04.01.2022 MAKIN THE INTERIM ORDER OF BAIL AS
ABSOLUTE PASSED IN CRL.P 7205/2021 AND FURTHER
RESPONDENT NO.2 BE DIRECTED TO SURRENDER BEFORE THE
TRAIL COURT WITHIN THE TIME THAT MAY BE FIXED BY THIS
HON'BLE COURT IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P.NO.10377/2023

BETWEEN

SRI. HARISH KUMAR N.M.
AGED ABOUT 41 YEARS,
S/O LATE D. MAHESH,
PRESENTLY RESIDING AT NO 673,
1ST MAIN, BANNIMANTAP B LAYOUT,
MYSORE-570015

...PETITIONER

(BY SRI. SIDDHARTH SUMAN, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY STATION HOUSE OFFICER,
RAMAMURTHY NAGARA P. S. POLICE STATION,

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NC: 2024:KHC:33404
CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

BENGALURU-560005

REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BANGALORE-560001

2. SMT. ASFIA HUSSAINI
AGED ABOUT 38 YEARS,
W/O SRI. HARISH KUMAR N M,
NO 402 B. SRINIDHI RESIDENCY APARTMENTS
364/2,4TH FLOOR,
BASAVANAGAR, MARATHALLI COLONY,
BENGALURU-560037

....RESPONDENTS

(BY SMT. ANITHA GIRISH HCGP FOR R1;
SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.P.C.,
PRAYING TO QUASH THE FIR REGISTERED BY THE
RAMAMURTHY NAGAR P.S., DATED 16.07.2021 IN
CR.NO.246/2021 FOR THE OFFENCE PUNISHABLE UNDER
SECTION 506, 420 PENDING ON THE 10 TH ADDL. CMM
AGAINST THE PETITIONER I.E. ANNEXURE-A II) THE CHARGE
SHEET FILED BY THE RAMAMURTHY NAGAR POLICE STATION
DATED 18.10.2021 IN C.C.NO.56243/2021 PENDING ON THE
FILE OF THE X ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, MAYO HALL UNIT, BENGALURU FOR THE
OFFENCE PUNISHABLE UNDER SECTION 354, 504, 506 OF IPC
I.E ANNEXURE-C, III) THE ORDER DATED 28.10.2021 PASSED
BY THE COURT OF THE HON'BLE X ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT BENGALURU
IN C.C.NO.56243/2021 TAKING COGNIZANCE OF THE
OFFENCES PUNISHABLE UNDER SECTIONS 354,504,506 OF IPC
AGAINST THE PETITIONER I.E ANNEXURE-D PENDING BEFORE
THE HON'BLE X ADDITIONAL CHIEF METROPOLITAN

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CRL.P No. 13275 of 2023

MAGISTRATE, MAYO HALL UNIT, BENGALURU IN
C.C.NO.56243/2021.

IN CRL.P. NO 13275 OF 2023

BETWEEN

SRI HARISH KUMAR N M
AGED ABOUT 42 YEARS,
S/O LATE D. MAHESH,
PRESENTLY R/AT NO.673,
1ST MAIN,
BANNIMANTAP LAYOUT,
S.S.NAGAR,
BANNIMANTAP,
MYSORE-570015

...PETITIONER

(BY SRI.SIDDHARTH SUMAN, ADVOCATE)
AND

SMT. ASFIA HUSSAINI
AGED ABOUT 39 YEARS,
W/O SRI. HARISH KUMAR N M,
NO.402, B. SRINIDHI RESIDENCY APARTMENTS,
364/2, 4TH FLOOR, BASAVANAGAR,
MARATHALLI COLONY, BENGALURU-560037

...RESPONDENT

(BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C.,
PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
CRL.MISC.NO.156/2023 PENDING BEFORE THE HON'BLE
METROPOLITAN MAGISTRATE TRAFFIC COURT - I, BENGALURU
UNDER SECTION 12 OF PROTECTION OF WOMEN FROM

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DOMESTIC VIOLENCE ACT (HEREINAFTER REFERRED TO AS
THE PWDVA) I.E. ANNEXURE-A AGAINST THE PETITIONER.

THESE CRIMINAL PETITIONS HAVING BEEN RESERVED
FOR ORDERS ON 24.07.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, MADE THE FOLLOWING..

CORAM: HON'BLE MR JUSTICE K.NATARAJAN

CAV ORDER

Crl.P.2233/2024 is filed by the defacto/complainant

Sri Harish Kumar N M vs Smt Asfia Hussaini on 20 August, 2024
under Section 439 (2) of Cr.P.C. for cancellation of the bail
granted to the accused/husband by this Court in
Crl.P.No.7205/2021 vide order dated 23.10.2021 arising
out of Crime No.246/2021 of Ramamurthy Nagar police
station, Bengaluru.

2. Crl.P.10377/2023 is filed by the accused/husband
under Section 482 of Cr.P.C. for quashing the Criminal
proceedings in CC No.56243/2021 pending on the file of
the X ACMM, Bangalore arising out of Crime No.246/2021
registered by the Ramamurthy Nagar police station,
Bengaluru and charge sheeted for the offences punishable
under Sections 354, 504 and 506 of IPC.

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3. Crl.P.No.13275/2023 is filed by the
accused/husband u/s 482 of Cr.P.C. for quashing the
criminal proceedings on the file of the Metropolitan
Magistrate Traffic Court-1 (MMTC-1), Bangalore in
Crl.Misc.No.156/2023 filed by the
complainant/petitioner/wife U/s 12 of the Protection of
Women From Domestic Violence Act, 2005(herein after
referred to as D.V. Act).

4. Heard the arguments of learned counsel for the
petitioner in Crl.P.No.13275/2023, 10377/2023 and senior

Sri Harish Kumar N M vs Smt Asfia Hussaini on 20 August, 2024
counsel appearing for the petitioner in Crl.P.No.2233/2024
and learned counsel for the respondent as well as learned
High Court Government Pleader appearing for the state.

5. The case of the petitioner Harish Kumar N.M. in
Crl.P.No.10377/2023 is that the respondent No.2
Smt.Asfia Hussaini filed a complaint to the Ramamurthy
Nagar police station on 16.07.2021, which was registered
in Crime No. 246/2021 alleging that the petitioner had

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cheated the complainant. The accused belongs to Hindu
community and respondent No.2 is a Mohammedan. The
accused told her that he is in love with her. Subsequently,
both of them had love affairs between them from 2005
onwards. Later, in November 2005, at about 11:00 a.m.,
the accused with a false promise of marriage had sexual
intercourse with defacto-complainant and again he had
intercourse with her on 26.06.2021 at 3:00 p.m.
Subsequently, he has failed to marry her on the ground
that she is a Muslim and his family members are not
accepting the marriage. He is said to have assaulted her
by outraging the modesty on 26.05.2020 and abused her
in filthy language and also cheated her. Hence, she has
filed the complaint before the police and the police during
the investigation arrested the accused petitioner and he

was remanded to judicial custody.

6. The bail petition of the petitioner was rejected by the Trial Court. Hence, he approached this Court by filing a petition under Section 439 of Cr.P.C. in
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Crl.P.No.7205/2021 and this Court heard the arguments.

During the argument, the counsel for the petitioner submitted that the accused is ready to marry the defacto-complainant. Therefore, this Court had granted interim bail and two months time was granted for the purpose of marriage and to produce the marriage certificate. Accordingly, the accused was released on bail. He subsequently, married the complainant and submitted the affidavit and marriage certificate before the Court on 04.01.2022. Accordingly, this Court made the interim bail as absolute.

7. Subsequent to the marriage, once again a dispute arose between the husband and the wife, that the accused said to be informed the defacto-complaint to withdraw the complaint against him. But, she refused to withdraw the complaint on the ground that she wants to wait for some more time to take decision of withdrawing the case and

she wants to wait for the change of behavior of the

accused/husband. Therefore, the accused-husband is
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before this Court by filing the petition for quashing the criminal proceedings, as he has already married the respondent. Therefore, the allegation of false promise and cheating does not arises, in view of petitioner/accused marring the defacto-complainant. Therefore, continuing the criminal proceedings is nothing of abuse of process of law. Hence, he prays for to quash the criminal proceedings against him.

8. Whereas, the Crl.P.No.2233/2024 is filed by the wife/defacto-complainant for cancellation of the bail granted to the petitioner/accused on the ground that the accused only for the purpose of getting out of the jail for only bail had made false representation and came out on bail. Subsequently, he has married the petitioner. It is alleged that soon after the marriage, the accused-husband forcefully thrown the complainant/wife out of the matrimonial home under the guise of Dhanurmasa month and even after completion of the said month, when she asked the accused to take her back to the matrimonial

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home, the accused refused to take her back. When the complainant went to the elder sister of the accused and informed about the accused, for that the sister of the accused filed a false complaint against the wife/defacto-complainant and FIR was registered against her.

9. It is further alleged that due to the harassment made by the accused-husband, she has filed a petition under the DV Act, where interim order is also passed and she was permitted to reside in the matrimonial home at Mysore. But, the accused did not allow her to reside in the house. Hence, she has filed application before the Magistrate to break open the door and reside in the matrimonial home. But, the accused did not provide the wife/defacto-complainant access to the bathroom situated inside the house. The accused also filed petition for quashing the criminal proceedings under the DV Act as well as complaint filed by her before the police. Therefore, she was constrained to file a petition for canceling the bail granted to the accused-husband.

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10. Crl.P.No.13275/2023 is filed by the husband for quashing the DV proceedings in Crl.Misc.No.156/2023

wherein the wife/defacto-complainant filed the application u/s 12 of the DV act, before the MMTC-1 contending that the accused/husband is committing domestic violence in the nature of physical, economic, verbal and psychological abuse. After the marriage dated 10.12.2021, she has narrated the love affairs between them. Accused-husband refused to marry her, thereafter filing the complaint and releasing on bail, he married the complainant and later started avoiding the complainant and sent her out of the house and failed to take her back and not allowing her in matrimonial house. On various contentions taken by her in the petition, she is seeking for monitory relief of Rs.50,000/- per month as maintenance, damages and Rs.50 lakhs towards fraud caused by the accused/husband. Being aggrieved by the petition filed by her, the husband is before this Court seeking for quashment of the proceedings under the DV act.

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11. Learned senior counsel for the petitioner/husband has seriously contended that the petitioner is innocent of the alleged offences. The allegation is that he has cheated the respondent No.2 after they had a lover affair and made false promise of marriage. But, in view of accused

Sri Harish Kumar N M vs Smt Asfia Hussaini on 20 August, 2024
marrying the respondent No.2, the question of cheating
does not arises. Therefore, once the marriage has
performed, the false promise of marriage does not arise.
Therefore, the criminal proceedings against the petitioner
shall be quashed.

12. Learned counsel for the petitioner has also
contended in DV Act case that she has suppressed the
petition filed for restitution of conjugal rights. Hence, the
proceeding before the Magistrate under Section 12 of the
DV Act is illegal. In the DV proceedings, the ex-parte order
has been passed, permitting the respondent to reside in
the house of the accused. Such an order can be passed
under Section 17 of the DV Act. The respondent has

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misused the provisions of law. The marriage to be
successful, a certain dimension of trust should exist and
be maintained between husband and wife. There is a lack
of trust, existing in the marriage of the petitioner with
respondent No.2. The restitution of conjugal rights has
been filed to live with the petitioner, but, she is not
coming to the house and she is attempting to harass the
petitioner, by filing the petition. Absolutely, there is no
case made out against the petitioner. Hence, prayed for
quashing the DV proceedings before the Magistrate.

13. Per contra, learned counsel for the respondent No.2 has objected the petition, contending that the accused/husband has cheated the wife/defacto-complainant with the false promise of marriage. He has sexually assaulted her and hence, the complaint came to be filed. He had undertaken to marry the respondent No.2 and came out on bail and married the respondent No.2. But, subsequently, started harassing the respondent No.2, for withdrawing the complaint and when, she refused to

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withdraw the complaint, he has harassed her and thrown out from the house. Therefore, she has approached the Magistrate under the D.V. Act, and also obtained the order for shared house. Therefore, it is contended that the accused violated the conditions of the bail. Hence, bail should be cancelled and he should be tried for the complaint filed by the respondent. Hence, prayed for dismissing the petition filed by the accused and allowing the petition filed by her for canceling the bail.

14. Having heard the arguments and perused the records, the point that arises for my consideration are:-

- i. Whether the petition filed by the accused/husband under Section 482 of Cr.P.C. can be allowed, in

view of the petitioner having married the respondent?

- ii. Whether respondent wife/defacto-complainant made out sufficient ground to cancel the bail granted by this Court?

- iii. Whether the petitioner/husband is entitled for relief for quashing the

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proceedings under the D.V. Act.
filed by the respondent/wife?

15. Learned counsel for the accused/husband has contended that the complaint came to be filed by the wife/defacto-complainant alleging that he has cheated her by sexually assaulting her under the false promise of marriage. It is contended that hence, the accused has already married respondent No.2, the question of cheating does not arise. Therefore, the criminal proceedings arising out of Crime No. 246/2021 shall be quashed. The same is objected by the wife/defacto-complainant, mainly on the ground, the charge sheet is filed for 354, 504 and 506 of IPC. Even though the accused married the wife/defacto-complainant No.2, the offence was being committed continuously from the year 2005, till 26.06.2021. Hence, he cannot be exonerated and even otherwise, the accused after the marriage once again has reverted back and left the company of the wife/defacto-complainant and thrown her out of the house. By considering the facts and

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circumstances of the case, of course, the allegation against the accused/husband was that he has cheated the complainant without marrying her. He is said to be outraged her modesty and had sexual intercourse with her and after registering the FIR and filing the charge sheet, he was arrested by the police and while considering the bail, the accused has stated that he is ready to marry the respondent. Accordingly, an interim bail was granted and he has married the respondent No.2 and the bail was made absolute. But, the criminal proceedings will not evaporate automatically, the offence once committed will not be exonerated, subsequently after filing charge sheet. It is nothing but, once the complaint of theft is made and if the stolen property was recovered from the accused, he cannot be exempted from criminal prosecution automatically. Therefore, once at the time of complaint, there was offence already committed by the accused and subsequently, even though he married the complainant, until the wife/defacto-complainant comes before the Court and withdraws the complaint by submitting no objection

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for quashing the complaint, the complaint and criminal
proceedings will not be exonerated automatically.

16. That apart, the accused married her only for the purpose of getting bail. Subsequently, he has thrown out the complainant from the house and she was forced to approach the Magistrate for the shared house and seeking compensation. Therefore, I am of the view that the criminal proceedings initiated against the petitioner in Crime No.246/2021 cannot be quashed.

Therefore,

answer to point No.1 is in negative.

17. As regards to the cancellation of bail, Crl.P.No.2333/2024 filed by the wife/defacto-complainant against the accused/husband on the ground of violation of the conditions. Of course, the respondent No.2 has already married the accused, as per the undertaking given before the Court. Therefore, once he has married the wife/defacto-complainant and complied the order, there is no violation of bail order or condition in order to cancel the

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bail. Absolutely, there is no ground made out for cancellation of the bail. Even otherwise, the offence is not punishable with death or imprisonment of life and the offence is triable by Magistrate. Therefore, the petitioner

has not made out the case for cancellation of bail. Hence,
Point No.2 is answered in negative.

18. As regards point No.3, to the quashing the order passed by the Magistrate under the DV Act, where it is stated there is ex-parte order passed by the Magistrate for shared house. Hence, prayed for quashing the same. By looking into the facts and circumstances of the case and dispute between the both of them, prior to the marriage and after the marriage, this Court not be inclined to quash the proceedings initiated by the wife under the DV Act.

19. Accused/husband should approach the same Court for recalling the order or else he can file appeal under Section 29 of the DV Act, before the Magistrate and at this stage, this Court cannot quash the criminal

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proceedings in the D.V.Act. Hence, answer to point No.3 is in negative.

20. Accordingly, the following order:

ORDER

I. Crl.P.No.10377/2023 filed under Section 482 of Cr.P.C. for quashing the Criminal proceedings in CC No.56243/2021 pending on the file of the X ACMM, Bangalore is hereby dismissed.

II. Crl.P.No.2233/2024 filed by the wife/defacto-

complainant under Section 439(2) of Cr.P.C. for cancellation of bail granted to accused/husband is hereby dismissed.

III. Cr.P.No.13275/2023 filed by the petitioner/husband for quashing the criminal proceedings on the file of the Metropolitan Magistrate Traffic Court-1 (MMTC-1), Bangalore in Crl.Misc.No.156/2023 under the DV Act is hereby dismissed.

Sd/-

(K.NATARAJAN) JUDGE NJ

Sri Ingua Phani Kiran vs Smt. Shailaja on 16 July, 2024

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NC: 2024:KHC:28264
WP No. 19918 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 19918 OF 2023 (GM-FC)

BETWEEN:

SRI. INGUA PHANI KIRAN,
S/O. SRI. KRISHNAMURTHY INGUA,
AGED ABOUT 41 YEARS,
RESIDING AT NO.403,
ARUN APARTMENTS,
OPP. TO KPHE,
KUKKATAPALLI,
HYDERABAD - 500 072.

...PETITIONER

(BY SMT. MONICA PATIL, ADVOCATE)

AND:

1. SMT. SHAILAJA,
W/O. MR. PHANI KIRAN INGUA,
AGED ABOUT 33 YEARS,
R/AT. LAKSHMI NARASIMHA STREET,
7TH LANE NEAR,
HARADA KHANDI,

Digitally
signed by
MEGHA
MOHAN

Location:
HIGH COURT
OF
KARNATAKA
BERHAMPUR DISTRICT,
GANJAM,
ORISSA - 760 005.

CURRENTLY R/AT:
SRI. SAI SOUJANYA LADIES PAYING GUEST,
MARUTHI NAGAR,
MADIWALA,
BANGALORE - 560 068.

2. MRS. PADMA INGUVA,
AGED ABOUT 64 YEARS,

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W/O. MR. KRISHNAMURTHY INGUVA,
RESIDING AT PLOT NO.70,
TELECOM LAYOUT,
JAKKUR,
NEAR AMRUTAHALLI,
BENGALURU - 560 092.

. . . RESPONDENTS

(BY SMT. SHAILAJA, PARTY-IN-PERSON)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED JUNE 13, 2023 PASSED ON I.A.NO.1 BY VI MMTC, CHIEF METROPOLITAN MAGISTRATE COURT, BANGALORE FILED BY THE RESPONDENT UNDER SECTION 23(2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE, ACT 2005 IN CRIMINAL MISC.NO.150/2014 (ANNEXURE-A) PAGE.983 AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:
ORDER

Aggrieved by the orders passed in I.A.No.1 in Crl.Misc.No.150/2014 dated 13.06.2023 by MMTC-VI, Chief Metropolitan Magistrate Court, Bangalore, the petitioner/ husband is before this Court.

2. The parties are referred to as husband and wife for the sake of convenience.
3. In view of the disputes between the parties, the husband had filed M.C.No.1347/2014 seeking divorce. The wife NC: 2024:KHC:28264 had filed the complaint under the Domestic Violence Act and in the year 2014, she had also filed a petition for interim order seeking maintenance of an amount of Rs.50,000/- per month. Earlier, when an order is passed, they have filed the proceedings that they have sought to quash the proceedings in the Domestic Violence case. In W.P.No.5985/2014 initially, there was stay and later the same was withdrawn in the month of March 2019. After the said Writ Petition was withdrawn, the Trial Court had granted maintenance of an amount of Rs.20,000/- per month. Aggrieved thereby they have preferred Crl.Appeal.No.2040/2019. As the interim order was not granted, they have filed a Writ Petition before this Court. When the matter was pending before this Court, the court had clubbed W.P.No.3417/2020 along with W.P.No.15154/2019. Thereafter, again the matter was remanded back to the Trial Court and the evidence was let in by the parties.
4. It is the case of the petitioner/husband that the Court granted maintenance of an amount of Rs.20,000/- per month in the matrimonial case under Section 24 of the Hindu Marriage Act and when the decree of divorce was granted with NC: 2024:KHC:28264 permanent alimony of an

amount of Rs.25,00,000/-. It is the case of the petitioner/husband that the Court having given several findings stating that the wife had not filed all the documents about her earning capacity and as per the Judgment of Hon'ble Apex Court in the case of Rajnesh Vs. Neha and another¹ and the Court had given several findings against the wife, but when it comes to the maintenance, the Trial Court had granted the maintenance of an amount of Rs.15,000/- per month from the date of petition that relates back to 2014. Learned counsel submits that they hardly lived together for 23 days. Now, the litigation is going on between the parties from the year 2014. It is submitted that the wife is not entitled for any maintenance and the findings of the Court makes it very clear. It is submitted that when already permanent alimony is granted, now, the question of paying the maintenance would not arise. Further, it is submitted that when this order is passed, for various reasons, the husband could not represent his case and the order is passed without hearing the husband, as such if this order is set aside and the matter is remanded AIR 2021 SUPREME COURT 569 NC: 2024:KHC:28264 back to the Trial Court, after hearing the husband, the Trial Court can pass appropriate orders. At any cost the order impugned before this Court is unsustainable and the same is liable to be dismissed.

5. Party in person who appeared through online submits that right from the year 2014 till now, this matter is going on and several times the matter has come up before this Court and it was kept pending in view of the stay orders granted by this Court, whereas she sought for maintenance in the year 2014. Till today, on one pretext or the other, the matter has been adjourned, the orders were set aside and were remanded. It is stated that in spite of notices issued to the husband, conveniently he is not appearing before the Trial Court and now at this point of time, learned counsel for the petitioner cannot make the submission that the matter has to be remanded back. It is submitted by the party in person that Under Section 24 of the Family Courts Act, an the amount of Rs.20,000/- was granted but it was never paid to the wife. It is stated that even in this case, earlier by order of the Court when Rs.20,000/- was directed to be paid, even in that arrears are running into lakhs NC: 2024:KHC:28264 of rupees. It is submitted that in the MFA, she has not questioned the decree of divorce and the husband has questioned it, in that there was a direction to pay an amount of Rs.10,00,000/-. It is further submitted that in the year 2014, when she was driven out of the house, at that point of time, when an interim application is filed seeking maintenance. For the best reasons known to the husband that the matter has been litigated over a period of 10 years and till now, the amounts are not paid. It is submitted that the order that is passed by the Trial Court is a well considered one.

6. Having heard the learned counsel on either side, perused the material placed on record. When the wife had filed a domestic violence case in the year 2014, the interim application filed seeking maintenance is for the immediate necessity and unfortunately in these matrimonial proceedings, sometimes interim applications are disposed of along with the final application. The purpose and purport for which the provision is incorporated either in the Hindu Marriage Act or under the Domestic Violence Act is defeated. The Trial Courts shall pass appropriate orders at least maximum within a period NC: 2024:KHC:28264 of two to three months from the date of appearance. In this case, interim application is of the year 2014, this impugned order is passed on 13.06.2023. By that time, decree of divorce is also granted on 28.11.2023 where the Trial Court had fixed the permanent alimony. Now, the orders passed by the Trial Court granting maintenance of an amount of

Rs.20,000/- per month has culminated into the final orders that is passed in the matrimonial case. Coming to the present case, learned counsel has submitted that the Court has given various reasons that the wife had not filed her statement of assets and liabilities and she is not entitled for maintenance and several other observation are made but maintenance is granted. Now, in this case, even according to the husband, he is earning an amount of Rs.1,25,000/-. According to the respondent/wife, he is earning an amount of Rs.4,00,000/- and odd. It is submitted that without taking the admitted amount as stated by the husband that is Rs.1,50,000/- and the wife is earning an amount of Rs.30,000/- per month, the Court had granted an amount of Rs.20,000/- under Section 24 of the Hindu Marriage Act. It is the case of the wife that the maintenance is not paid. When it comes to the relief that is sought under the Domestic NC: 2024:KHC:28264 Violence Act is concerned, it is an independent relief and remedy to the party and just because the maintenance is granted under the Domestic Violence Act that will not preclude the party from claiming maintenance in other proceedings. Now, admittedly the matrimonial proceedings are concluded. The petition under section 24 of the Hindu Marriage Act is filed in the year 2014. In the M.C. case, interim application for maintenance is filed in the year 2018. Right from the year 2014, under any of the Act she was not getting any amount. The divorce is granted on 28.11.2023. It is submitted that some of the amount has already been paid and some more amounts needs to be paid. Admittedly, the husband is earning three or four times than the wife and according to the wife with the money she is earning, she is not in a position to maintain herself. The Trial Court has rightly granted the compensation. This court is not inclined to remand the matter as argued by the petitioner. In spite of giving several opportunities the husband has not utilized the same, further the permanent alimony that is granted by the Trial Court was stayed by this Court and only Rs.10,00,000/- was directed to be deposited. Further, the divorce was granted on 28.11.2023, till that day NC: 2024:KHC:28264 the husband has to pay the maintenance. Hence, this Court deems it appropriate to pass the following, ORDER i. The petitioner/husband shall pay the amount of Rs.15,000/- from the date of petition i.e., 28.11.2023.

ii. There are no reasons to interfere with order

passed in I.A.No.1 in Crl.Misc.No.150/2014

dated 13.06.2023 by MMTC-VI, Chief

Metropolitan Magistrate Court, Bangalore iii. Accordingly, the writ petition is disposed off. iv. All I.As. in the Writ Petition, shall stand closed.

SD/-

JUDGE BN

Sri Kimmudira A Ravi Chengappa vs State Of Karnataka on 25 July, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 55534 OF 2013 (KLR-RES)
C/W
WRIT PETITION NO. 27143 OF 2013 (KLR-RR/SUR)
WRIT PETITION NO. 27144 OF 2013 (KLR-RR/SUR)

WRIT PETITION NO. 38470 OF 2013 (KLR-RES)

IN W.P.NO.55534/2013
BETWEEN

1. BRIGADIER MALETIRA A DEVAIAH (RETD.)

AGED ABOUT 63 YEARS

FLAT NO. 536, JALAVAYU TOWERS

NGEF LAYOUT, INDIRA NAGAR POST

BANGALORE-560038

Digitally signed
by

NARAYANAPPA
LAKSHMAMMA

Location: HIGH
COURT OF
KARNATAKA

2. MR CHAPPANDA K NANAIAH

AGED ABOUT 68 YEARS

KOLATHODU, BYGODU VILLAGE
HATHUR POST
KODAGU-571218

3. COLONEL KALENGADA M GANAPATHY

AGED ABOUT 58 YEARS

A-102 MALAPRABHA

NATIONAL GAMES VILLAGE

KORAMANGALA
BANGALORE-560047

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013

WP No. 27144 of 2013

AND 1 OTHER

4. MR BATTIYANDA A JAGADEESH
AGED 49 YEARS
NARIYANDAD VILLGE
CHEYANDANE POST
VIRAJPET
SOUTH COORG-571218
5. MR PALANGANDA T BOPANNA
AGED ABOUT 63 YEARS
144/1, THIRD CROSS, BYRASANDRA ROAD,
JAYANAGAR 1STBLOCK EAST
BANGALORE-560011
6. BALLACHANDA A NANAYYA
AGED ABOUT 73 YEARS
DECHOOR
MADIKERI-571201
7. BOLLARPANDA K BOPANNA
AGED ABOUT 29 YEARS
BEGUR VILLAGE
KARGUNDA POST
MADIKERI TALUK
KODAGU-571201
8. PATTAMADA I KALAPPA
AGED ABOUT 82 YEARS
CHARAMBANE POST
MADIKERI
KODAGU-571201
9. IMUDIANDA P CARIAPPA
AGED ABOUT 73 YEARS
SURLABE VILLAGE POST
SOMAVARPET TALUK
KODAGU-571274
10. PULLIANDA B CHINAPPA
AGED ABOUT 63 YEARS
MAGULLA VILLAGE
IMANGALA POST

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

VIRAJPET
SOUTH KODAGU-571218

11. MACHIMANDA C APPACHU
AGED 66 YEARS
KAVADI VILLAGE
AMATHI POST
SOUTH KODAGU-571218
12. MACHETTIRA K MONAPPA
AGED 70 YEARS
NO.2637 (17/B) 36TH A CROSS
9THBLOCK, JAYANAGAR
BANGALORE-5600069
13. KARTHAMADA M POONACHA
AGED 60 YEARS
BIRUNANI VILLAGE & PO
VIRAJPET
S COORG-571215
14. MALACHIRA P SOMAIAH
AGED 59 YEARS
NALLOR VILLAGE
KIRGOOR POST
KODAGU-571215
15. KUTTANDA M CHENGAPPA
AGED 65 YEARS
C/O K M IYAPPA
SITA NIVAS
AMMATHI TOWN AND POST
KODAGU-571211
16. CHETTRUMADA M POONACHA
AGED 62 YEARS
NALOOR VILL
KIRGOOR PO
S KODAGU-571215
17. KAMBANDA M JAGADESH

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

AGED 53 YEARS
BETOLI VILLAGE & PO
VIRAJPET
KODAGU-571215

18.ALARANDA B MADAPPA
AGED ABOUT 31 YEARS
NALADI VILL
KAKABE PO
MADIKERI
KODAGU-571218

19.KAMBEYANDA M NANJAPPA
AGED ABOUT 42 YEARS
KUNJILA VILLAGE
KAKABE PO-571212

20.ALLAYANDA S AIYAPPA
AGED ABOUT 52 YEARS
NALADI VILLA ,KAKABE PO
MADIKERI
KODAGU-571212

21.PATAMADA U AIYAPPA
AGED 28 YEARS
S/O SANNA PULIKOT PO & VILL
IYAGERI, MADIKERI
KODAGU-571212

22.BACIMANDA P CHINAPPA
AGED 36 YEARS
KAKABE PO
KUNJLA VILLAGE
MADIKERI
KODAGU-571212

23.MARCHANDA K THIMMAIAH
AGED ABOUT 56 YEARS
MARNDODA VILL & P O
YAVAKAPADI-571212

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

24.BOLLAJIRA B AIYANNA
AGED ABOUT 31 YEARS
K BADAGA, FMKMC COLLEGE POST
MADIKERI-571201

25. AMMATANDA E MEDAPPA
AGED 29 YEARS
HAKATHUR VILL & POST
MADIKERI-571201
26. MACHAMADA K RAMESH
AGED ABOUT 56 YEARS
TAVALAGIRI VILLAGE
T SHETTIGERI POST
VIRAJPET
KODAGU-571218
27. MANNERA B NANJAPPA
AGED ABOUT 64 YEARS
HARIHARA VILL & POST VIRAJPET
KODAGU-571218
28. MALCHIRRA C ASHOK
AGED ABOUT 52 YEARS
AIYAPPA TEMPLE ROAD
PONNAMPET
VIRAJPET
KODAGU-561218
29. KOTRANGADA N MANU SOMAIAH
AGED ABOUT 51 YEARS
KAMATAKERI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
30. AJJAMADA A SUBRAMANI
AGED ABOUT 48 YEARS
KURCHI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
31. BADMANDA D LAVA
AGED ABOUT 41 YEARS

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

- WEST NEMMALE
VIRAJPET
KODAGU-561218
32. HOTTENGADA R SOMANNA
AGED ABOUT 34 YEARS
HYSODULUR VILLAGE
HUDIKERI POST
VIRAJPET
KODAGU-561218
33. PUTHARIRA T KALAIAH

AGED 36 YEARS
CHETHALI VILLAGE AND POST
MADIKERI
KOKDAGU-561201
34. BALLEYADA G PRAKASH
AGED 32 YEARS
NAPOKULU VILL & POST
MADIKERI
KODAGU-561201
35. KORAVANDA C DEVAIAH
AGED ABOUT 30 YEARS
KADAGADAL VILL & PO
MADIKERI
KODAGU-561201
36. CHENDANDA C DEVAIAH
AGED 69 YEARS
BALGODU VILLAGE
BITANGALA POST
KODAGU DISTRICT-571218
37. THABBANGADA S CHITTIAPPA
AGED 68 YEARS
THAVALEGERI VILLAGE
T SHETTIGERI PO
VIRAJPET
SOUTH KODAGU-571218

...PETITIONERS

(BY SMT: SAROJINI MUTHANNA., ADVOCATE)

AND:

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

- 1 . STATE OF KARNATAKA
REP BY IT SECRETARY
DEPARTMENT OF REVENUE
VIDHAN SOUDHA
BANGALORE - 1
- 2 . SECRETARY TO GOVERNMENT
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION
VIDHAN SOUDHA
BANGALORE - 1
- 3 . DEPUTY COMMISSIONER
MADIKERI,
KODAGU 571 201

... RESPONDENTS

(BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KOLATHANDA U RAGU MACHAIH AGED ABOUT 58 YEARS SECOND RUDRAGUPPE VILLAGE KANDANGALA POST VIRAJPET TALUK KODAGU 571 218 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A NOTIFICATION NO. SAMYASHEE 53 SHASANA 2011, BANGALORE DT.1.2.2013 AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KIMMUDIRA A RAVI CHENGAPPA AGED ABOUT 50 YEARS MADENAD VILLAGE & PO MADIKERE TALUK KODAGU-571201 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN 1 . KETOLIRA P SOMANNA AGED ABOUT 51 YEARS YAVAKAPADI VILLAGE & PO MADIKERI, KODAGU-571212 2 . PANDANDA J. NARESH AGED ABOUT 50 YEARS

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NC: 2024:KHC:29383 AND 1 OTHER YAVAKAPADI VILLAGE & POST, MADIKERI, KODAGU-571212 3 . KALIYANDA A. AIYAPPA AGED ABOUT 35 YEARS KAKABE VILLAGE & P.O.

MADIKERI KODAGU-572124 . MANAVATIRA SUNNY POOVAIAH AGED ABOUT 46 YEARS F2, CRESCENT OPULNET, 12THCROSS, 13THMAIN, BTM, 2NDSTAGE, BANGALORE-76 ...PETITIONERS (BY SMT: SAROJINI MUTHANNA., ADVOCATE) AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011

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NC: 2024:KHC:29383 AND 1 OTHER ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ CAV ORDER

1. The Petitioner in W.P.No.55534/2013 is before this Court seeking for the following reliefs:

a. Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b. Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c. Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records. d. Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

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NC: 2024:KHC:29383 AND 1 OTHER e. Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

f. Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

2. The petitioner in W.P.No.27143/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013 as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.

d) Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

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NC: 2024:KHC:29383 AND 1 OTHER

f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

3. The Petitioner in W.P.No.27144/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the Respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the Respondents to refrain from asking holders of Jamma bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the

revenue records.

- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

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NC: 2024:KHC:29383 AND 1 OTHER

4. The Petitioner in W.P.No.38470/2013 is before this Court seeking for the following reliefs:

- a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
- b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
- c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.
- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

5. The Petitioners belong to the Kodava race (Coorg race). They claim to represent their respective Okka or joint family as shareholders of the joint family

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NC: 2024:KHC:29383 AND 1 OTHER properties of their respective clan. The lands owned by the joint family are customary privileged Jamma land tenures governed by customary laws that prohibit partition and alienation of these traditional lands, which they claim to be peculiar to the Coorgis/Kodava race.

6. The Petitioners are aggrieved by the Karnataka Land Revenue (III) Amendment Act 2011, by virtue of which an explanation is added to Subsection (20) of Section 2 of the KLR Act as under:

(20) "Occupant" means a holder in actual possession of unalienated land other than the tenant:

Provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Explanation.--A ryotwari pattadar in the Mangalore and Kollegal Area and Bellary District, a pattadar or shikmidar in the Gulbarga Area and a holder or land-holder including Jamma Bane privileged and un-privileged, Umbli land in the Coorg District shall be deemed to be an occupant of such land for purposes of this Act.

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NC: 2024:KHC:29383 AND 1 OTHER

7. Further amendment is made to Section 80 of the KLR Act where after the words "wherever situate" the following words are added "including unalienated Jamma Bane land held by the occupant in Coorg district" which after amendment reads as under:

80. All land liable to pay land revenue, unless specially exempted.--All land, whether applied to agricultural or other purposes and wherever situate, including un-alienated Jamma Bane land held by the occupant in Coorg District, is liable to the payment of land revenue to the State Government according to the provisions of this Act, except such as may be wholly exempted under the provisions of any special contract with the Government or any provision of this Act or any other law for the time being in force.

Provided that the State Government may, by notification or order and subject to such conditions if any, as may be specified therein, for reasons to be recorded in writing, exempt either prospectively or retrospectively any class of lands in any area or areas or any part thereof from the payment of land revenue.

8. The Petitioners claim that these two amendments would disrupt the Kodava joint family, in furtherance of such amendment, the Revenue authorities are insisting the joint family members furnish a partition

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NC: 2024:KHC:29383 AND 1 OTHER deed for the purpose of entry of their name in the revenue records as 'Occupant', thereby forcing the joint family to execute a partition deed, when in fact they do not intend to do so. Such a demand is contrary to the customary and religious practice of the Kodava race and it is in that background that the Petitioners have filed the above petitions challenging the amendment.

9. Smt. Sarojini Muthanna, Learned Counsel for the Petitioners would submit that, 9.1. The amendments made are ultra vires the constitution thereby void. Prior to the amendments being made, the names of all members of the family were entered in the revenue records in the 9th column. After the amendment, the revenue authorities are seeking for a partition deed, as also a 11-E sketch demarcating the share of the person

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NC: 2024:KHC:29383 AND 1 OTHER who wants his name to be entered in the revenue records. Failure to furnish the above has resulted in not entering the names of such family members in the revenue records, thereby constraining and in fact, coercing the Kodava family to execute a partition deed, divide the property by metes and bounds, get a survey sketch done and thereafter place on record the partition deed and 11E sketch, and it is only thereafter that the entry is made in the revenue records.

9.2. Once a partition is executed and entry made in the revenue records, a joint family member who is registered as an occupant is treated as an absolute owner of the property, which has resulted in such occupants transferring the property to third parties, which is opposed to customary laws of Kodavas inasmuch as the properties are required to be retained as a joint

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NC: 2024:KHC:29383 AND 1 OTHER family property for the use and benefit of all members of the joint family. By alienating a portion of the property to third parties, the other members of the family are deprived of the usage of the said property. This is contrary to Section 100 of the KLR Act, which is reproduced hereunder for easy reference:

100. Occupancy not transferable without sanction of prescribed authority nor liable to process of a Civil Court.-- In any case, where an occupancy is not transferable without the previous sanction of the prescribed authority and such sanction has not been granted to a transfer which has been made or ordered by a Civil Court or on which the Court's decree or order is founded,--

(a) such occupancy shall not be liable to the process of any Court and such transfer shall be null and void; and

(b) the Court, on receipt of a certificate under the hand and seal of the Tahsildar, to the effect that any such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted, shall remove the attachment or other process placed on or set aside any sale of or affecting such occupancy.

9.3. She further submits that this is also contrary to the erstwhile Coorg Land Revenue Regulations, 1899 ['CLRR' for short], more particularly

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NC: 2024:KHC:29383 AND 1 OTHER Section 45 and 145, which are reproduced hereunder for easy reference:

45 Summary eviction in case of alienation of certain lands :-

Except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government. 'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

145. Bar of suits in certain matters :-

Except as otherwise provided by this Regulation, no suit shall be brought in any Civil Court in respect of any of the following matters, namely.

- (i) the limits of any land which has been defined by a Revenue Officer as land to which this Regulation does or does not apply;
- (ii) any claim to compel the performance of any duties imposed by this Regulation or by any other enactment for the time being in force or any Revenue Officer as such;
- (iii) any claim to the office or emoluments of parpattigar or Village Officer or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

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NC: 2024:KHC:29383 AND 1 OTHER

- (iv) any notification directing the making or revision of a record-of- rights;
- (v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;
- (vi) the correction of any entry in a record-of-rights, annual record or register of mutations; (vii) any notification of a general assessment having been sanctioned by the Central Government;
- (viii) the claim of any person as to liability for an assessment of land revenue or of any other revenue under this Regulation;
- (ix) the amount of land revenue to be assessed on any holding under this Regulation;
- (x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Regulation, or any cess, charge or rate to be assessed on any holding under this Regulation or under any other enactment for the time being in force;
- (xi) any claim to hold free of revenue or at favourable rates any land, mills, fisheries or natural products of land or water;
- (xii) any claim connected with or arising out of the collection of the land revenue by the Government or the enforcement by the Government of any process for the recovery thereof;
- (xiii) any claim to set aside on any ground, other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue;
- (xiv) the amount of, or the liability of any person to pay, any fees, fines, costs or other charges imposed under this Regulation;
- (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the

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NC: 2024:KHC:29383 AND 1 OTHER distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

(xvi) any claim arising out of the liability of an assignee of land revenue to pay a share of the cost of collecting or reassessing such revenue. 9.4. The Kodava joint family is forced to do the above, as without the entry of all the names of all the members of the joint family in the revenue records, such a member cannot approach any Bank for crop loan and, more importantly without the name being

entered into in the revenue records, no exemption is given to any member of the Kodava Race in respect of arms licence, for which verification is made upon the entry of their name in the revenue records.

9.5. Each Kodava 'Okka' (family) holding comprises of an 'Aiyne Mane' [main dwelling house] and a 'Kaimada' [temple for ancestors] located in the

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NC: 2024:KHC:29383 AND 1 OTHER said land which belongs to the entire joint family. On all occasions, both auspicious and inauspicious, as also during festivals, prayers are offered at these Kaimadas to their ancestors who are known as 'Karona'. Each and every member of the family is entitled to offer prayers to their ancestors. The Kodavas being ancestor worshippers, an alienation if made, of the land where the Kaimada is located would deprive all family members of their entitlement to ancestral worship, which is an essential practice of the Kodavas.

9.6. Kodavas are a separate ethnic minority having a distinct lifestyle, culture, tradition and custom, which is now upset by the impugned amendment. Apart from an Aiyne Mane and a Kaimada in the common lands, a 'Thutengalas' i.e. family graveyard is maintained. All members of the family are buried in that land

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NC: 2024:KHC:29383 AND 1 OTHER which is also part of the Jamma land. This land was also held in common by the joint family. 9.7. Once partition is effected this land would fall to the share of one particular family member, thus again disrupting the family activities. In the event of the said land being alienated and or the person to whose share this land falls under a partition deed, not permitting other family members to offer their prayers and or worship their elders, the rights of the other family members would be adversely affected. 9.8. Jamma Bane lands are privileged tenures in terms of Rule 164 of the CLRR, their inclusion under Subsection (20) of Section 2 would undo the Kodava customary laws. This aspect had been recognized by the British during their administration of the Coorg area and as such, no member of the joint family can seek or

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NC: 2024:KHC:29383 AND 1 OTHER transfer any land without the consent and concurrence of all other elder members of the family. Furthermore, there was a prohibition in transferring any land outside the patrilineal clan of the family, thus, the transfer was within the clan, safeguarding the interest of all members of the family. Jamma Bane lands were used for the purpose of preparing leaf manure, grazing of cattle, etc. and thus, were used as a part of this warg land (wet land). The manure generated from the Bane lands are used in the warg land, the cattle used to till the wet land would graze in the Bane land, etc. 9.9. Each Kodava family has a family name, which is also called the house name, which is used by each of the members of the family. The owner and/or occupant of the land in Coorg is not an individual member but an abstract family name/house name, and the

other members of

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NC: 2024:KHC:29383 AND 1 OTHER the family are treated as division holders or maintenance division holders who can use the land and the produce made therein for their maintenance.

9.10. The elder of the family is the 'Patedara' in whose name the property is registered by including the Bane land into a regular land, the said Bane land would become amenable to the imposition of tax even though there is no cultivation envisaged as regards the Bane lands. Jamma lands are of two varieties, alienated and unalienated. Alienated Jamma Bane lands were used for cultivation of coffee and unalienated Jamma lands are those attached to a paddy field or warg, sometimes it is called Jamma wargs which are only used for leaf manure and grazing of cattle, there being no cultivation in such lands. Until the amendment, these lands were never taxed by

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NC: 2024:KHC:29383 AND 1 OTHER the British or the Kings or, even after independence, by the Government, it is only now that these lands are sought to be taxed by way of the impugned amendment.

9.11. In this regard she relies upon page 520 of 'the Karnataka State Kodagu District Gazette' by Suryakanth Kamath, which is reproduced hereunder for easy reference:

The real object of enforcing these restrictions is vividly described in a letter to the Government of India dated 12.9.1865 and it was approved by the Government of India. "In regard to sale of Jamma lands, I am prepared to admit its advisability. Many impoverished Coorgs might wish to dispose off their lands (jamma) but I think official sanction to such a step should be withheld as hitherto as I believe it would be fraught with danger to the nationality of Coorgs and the tenure itself, of which the conditions of service are a mani feature, would be abrogated by permitting such land to fall into the hands of Europeans or natives of Mysore from whom a service like that rendered by Coorgs could not be expected".

9.12. She also relied on the publication of 'Land Systems of British India' by B.H. Baden

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NC: 2024:KHC:29383 AND 1 OTHER Powell, more particularly page 475 thereof, which is reproduced hereunder for easy reference:

6. Báné Lands.

(It has already been mentioned that with every holding of jamma land (and the same is true also of ságu land) in Coorg proper, the holder acquires the use of an appurtenant plot of 'báné land that is, a plot of forest land varying (and not always according to the size of the principal holding) from 4 or 5 to 300 acres. It is now, by rule, limited to double the area of the principal holding. The báné is located on the slopes above the valley where the rice- cultivation is, or somewhere near it, and it is destined to supply the warg-holder with grazing, timber, firewood, and above all with bamboos, branches, and herbage, which he burns on the rice- fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural domestic wants of the holder; and if timber, &c., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood. Sandal-wood trees found in báné land are always reserved as the property of Government. In the jamma tenure, as the báné is included in the sanad, it is virtually a part of the property. In the ságu tenure there is no sanad; but the attached area of báné must be held and used subject to the same conditions. Under these circumstances, the báné cannot be regarded as actually the property of the tenure-holder, nor, on the other hand, as land at the disposal of Government. It is rather land which is held as an appendage to a warg or estate, or to a ságu holding, in a sort of trust, or on condition for a certain use.)

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NC: 2024:KHC:29383 AND 1 OTHER Had the báné so remained, there would be nothing more to be said about it. In old days, in Central Coorg at any rate, no one wanted to cut trees for sale, for they had no market value; no one cultivated the báné, beyond raising a few orange or plantain-trees, or ploughing up parts where it was possible to raise a little dry cultivation which was not thought worthy of notice; hence the báné, as an appendage, did not subject the holding to any further revenue- assessment. But in time the land became more valuable, and people began to sell the trees, or what is more, to cultivate coffee. So long as this was done without general clearing, it did little harm; but in time, as larger clearances were made, the utility and natural purpose of the báné were threatened; and moreover the people soon attempted to alienate the land itself, selling or leasing it to coffee- planters; and when this was found profitable, fictitious 'wargs' were imagined and báné applied for under that pretence, and then used for coffee-planting.

The question of preventing these abuses soon arose, and 'báné' rules are now in force as regards assessment. It has for some years been allowed, as a concession, to cultivate coffee on ten acres in the báné without charge; and in 1875 a further concession was made to 'jamma' báné, so that coffee might be cultivated even in excess of ten acres provided that the bushes were planted under the natural forest without removing the large tree. All cultivation in excess of this is assessed. 9.13. Even though the Warg lands are held separately and even though alienated Jamma Bane lands are also held separately, the unalienated

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NC: 2024:KHC:29383 AND 1 OTHER Jamma Bane lands are held jointly and there can be no partition of such unalienated Jamma Bane lands. Her submission is that the privileged Jamma lands or lands of privileged tenants, though are heritable, are not transferable. By effecting a

partition, the very purpose of such privileged tenure is lost. Her submission is that the usage of the word privileged itself is a misnomer and misconstrued. Privilege is not defined under the Act, the word is used very loosely and has undergone changes from time to time. 9.14. Initially Jamma lands were granted to a member of the Coorg race by the then King for the services rendered in the Army by such member of the Coorg race and due to the lands being so granted and being privileged and being of the privileged tenure, the assessment of the said land was also on a reduced basis. She

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NC: 2024:KHC:29383 AND 1 OTHER refers to a Hukumnama issued by the then King regarding one such land and submits that the Jamma right holders paid only half the assessment in terms of the sannad issued by the King.

9.15. Section 45 of the CLRR restricts the sale of the property. The CLRR also provided for retention of the land in the family by not assessing the entire land.

9.16. Even as regards the alienated Jamma land, which is used for coffee plantation, 10 acres of coffee cultivated area was free from assessment and lands only in excess of 10 acres was assessed. Since most Bane lands had remained uncultivated, to encourage cultivation, 10 acres of such Bane lands used for cultivation remained free from assessment.

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NC: 2024:KHC:29383 AND 1 OTHER 9.17. The land used for cultivation was called 'privileged saguvali' and the lands which were not so used continued to be called "Jamma Bane". It is the land which was used for agricultural purposes but was also assessed to tax, those lands were called unprivileged Bane lands, thus the use of the terms 'privileged' and 'unprivileged' was only to indicate whether the land was subject to assessment of tax or not. 9.18. In the year 1974 this exemption from assessment was withdrawn and even privileged Jamma Bane lands were made amenable for full assessment, however the nomenclature of privileged Jamma Bane and unprivileged sagu bane has continued. She submits that this being the distinction, she relies on the Full Bench of this Court in the case of Cheekere Kariyappa Poovaiah -v- State of

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NC: 2024:KHC:29383 AND 1 OTHER Karnataka1, more particularly paras 11, 12, 13, 18, 19 and 22 thereof, which are reproduced hereunder for easy reference:

11. The aforesaid scheme of the Coorg Regulation and the clear picture of different types of Jama Banes which is projected bring-out one salient fact, that in case of privileged or unprivileged Banes which were not alienated and erstwhile Bane holders of such Bane lands continued to have limited privileges qua the Bane lands held by them viz., that they had to use the attached Bane for servicing the holding of the wet land which was held by them on Jama tenure and that he could use this Bane

for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this Bane for aforesaid limited purpose without any liability to pay any land revenue. It is also pertinent to note that in such privileged or unprivileged Bane, the concerned holder had no interest or right in the sub-soil of the Bane as clearly laid-down by Section 47 of the Regulations referred to earlier. He had also no interest in the wood of the trees standing on the Bane save and except taking wood for the limited domestic purposes, and for purposes of agriculture. He had no right to take the wood of trees for any commercial or other purposes unless he has paid the full timber value for cutting such trees, meaning thereby the trees were clearly shown to have been belonging to the Government, the timber of which could not be utilised by Bane holder unless he pays full price for the timber of such trees. This amounted to sale of timber wood by the Government to the concerned Bane holder. Such Banes held on privilege tenure also could not be alienated without paying nazarana as per Rule 167 to the Government.

That also indicated that such Bane holders had no proprietary interest in the land and when they wanted to alienate such privileged Bane lands held by them they had to pay nazarana to the Government apart from obtaining permission from the concerned authority under Section 45 and if that was not done he would be ILR 1993 KAR 2959

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NC: 2024:KHC:29383 AND 1 OTHER liable to be summarily evicted from such Bane, as that would be considered to be a Bane land, land revenue of which was considered to be wholly released. Therefore, on a conjoint reading of Sections 42, 45 and 47(1) of the Regulation and Rule 167 of the Rules framed thereunder, it becomes clear that holder of a Jama Bane land which was not alienated and which was either a privileged Bane or unprivileged Bane, was not proprietor of this Bane. But he had limited privilege as indicated in the definition of Bane found in the Regulation and therefore in the light of Section 42 such unalienated privileged or unprivileged Bane continued to vest in the Government.

12. This conclusion of ours is not in any way whittled down by sub-section 2 of Section 47 of the Regulation as it deals with a situation wherein for exercising any sub-soil rights in Bane lands mentioned in sub-section 1 Section 47, it becomes necessary either for the Government or any person acquiring rights from the Government to acquire any land in the holding or enjoyment of others. Then such land can be acquired under the provisions of Land Acquisition Act, 1894. This sub-section 2 naturally contemplates acquisition of some other lands and not acquisition of Bane lands itself as it continued to remain in the ownership of the Government. Working of sub-section 2 of Section 47 could better be highlighted by an illustration.

13. Supposing unalienated Bane land is held by a person, the sub-soil rights in which belong to Government. The Government enters into a contract with a Contractor permitting him to mine subsoil mineral found in the Bane-land and if such contractor had to approach the Bane land

through the land of somebody else, then to the extent somebody else's land viz., neighbour's land is to be utilised by way of passage for approaching the Bane land, that much portion of the land in possession of the neighbour could be acquired under the Land Acquisition Act, Section 47(2) cannot be read to mean that compensation is to be paid to the holder of unalienated Bane land by acquiring the Bane land as that situation would never arise in view of the fact that Bane land itself remains vested in the State.

18. The aforesaid provisions of 1964 Act clearly show that even after Coorg Regulation was repealed when the 1964 Act came into force, if a holder of Jamma

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NC: 2024:KHC:29383 AND 1 OTHER Bane land, whether privileged or unprivileged was holding the said Jama Bane land in the same condition then his privileges in Jama Bane land which existed earlier viz., utilising this land as an appendage to warg Jama holding for servicing the said warg and for enjoying privilege free of land revenue and also utilising the Bane land, for grazing of his cattle and for supplying leaf manure, fire-wood, timber required for domestic and agricultural purposes of the cultivator so long and he continued in possession of the wet land, were all preserved and continued to remain vested in him even after 1964 Act. That position is exemplified by Section 79 especially sub-section 2 thereof to which we have already made reference. Therefore, the status-quo-ante regarding privileges of Jama Bane land holder qua Jama Bane land as such as existed during the operation of 1899 Regulation continued to operate after 1964 Act but it never got enlarged into full-proprietory ownership of such holders qua their Jama Bane land. On the contrary the right to trees growing on the land which had continued to vest in the Government earlier did not get divested nor did it vest in Jamma Bane holder under 1964 Act and even sub-soil which did not vest in the Jama Bane holder under 1899 Regulation also did not get vested in the Jamma Bane holder. On the other hand as per Section 70 of the Act they all continue to remain vested absolutely in the State Government. We must however add one rider to this position. If, during the time of operation of 1899 Coorg Regulation or even priori thereto, the Jama Bane land had ceased to be a Jama Bane as such and had become an alienated Bane and had got detached from the Service yoke of the warg land to which earlier it was attached and if it was fully assessed, irrespective of the fact whether such separation of the Jamma Bane from the warg land to which it was attached was sanctioned under Rule 136 of the Coorg Rules by Deputy Commissioner or not, and whether any penal assessment was levied on such Jamma Bane holder or not, such Bane land holder could not be said to be having only limited privileges qua such alienated Banes. On the contrary if the Jamma Bane holder was the holder of any alienated Bane on the coming into force of Karnataka Land Revenue Act, 1964, he became an occupant of such fully assessed erstwhile Jamma Bane land and was entitled to all the rights and obligations of an occupant-holder of an unalienated land paying full assessment to the Government and therefore he became an occupant of such land within the meaning of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. In this connection we may also refer to one aspect of the matter which was brought to our notice and on which there cannot be any controversy.

19. During the time when Regulation 1899 was holding the field and even thereafter on many occasions the State of Karnataka acquired the rights of Jamma Bane land holders under Land Acquisition Act. Our attention was invited to the Coorg Gazette of 1956 to show a few samples of such Notifications. One such Notification found at page-39 of the Coorg Gazette refers to Government Notification dated 30-12-1955 seeking to acquire one privileged Jamma Bane land Survey No. 24/1 under the provisions of Land Acquisition Act. Similarly, at page No. 89 is found a Notification dated 2.2.1956 by which certain privileged Jamma Bane lands were sought to be acquired under Section 4(1) of the Land Acquisition Act 1894. Third such Notification is found at page No. 93. It refers to acquisition of privileged Jamma Bane land under Section 4(1) of the Land Acquisition Act. Similarly, such another Notification dated 20-2-1956 is found at page 94 of the Gazette. At page 117 is found a Notification dated 6.3.1956 seeking to acquire privileged Jamma Bane lands under Section 6 of the Land Acquisition Act 1894. Relying on these Notifications it was vehemently contended by learned Counsel for the Petitioners that these acquisition proceedings themselves show that the Government Authorities treated holders of privileged Jamma Bane lands as having proprietary interests, otherwise there would have been no occasion for the Government to acquire these lands. Now, it must be noted that even a privileged Jamma Bane holder had some interest or privilege in the Jamma Bane land though he may not be a full proprietor thereof. As we have noted earlier he had certain privileges flowing from his occupation of privileged Jamma Bane land. This type of privileges would necessarily show some restricted interest in these lands. If the Government wanted to abolish even these privileges and concessions which were otherwise giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under Land Acquisition Act, and obviously compensation was payable to such privileged Jamma Bane holders by evaluating their limited interest and not the full interest as the proprietor. Therefore, from the mere fact that these

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NC: 2024:KHC:29383 AND 1 OTHER privileged bane lands were put to acquisition it cannot be inferred of necessity that holders of such Jamma Bane lands were treated by the Government to be the full owners of such lands. As we have seen earlier except these limited privileges and concessions in privileged Jamma Bane lands they had no right in the sub-soil, they had no ownership of the trees growing thereon. They cannot even cultivate these lands. Therefore, they had merely the right to enter upon the lands to collect the leaves to utilise as manure or for collecting wood for domestic or agricultural purposes and nothing more. This limited privilege or right, if had to be acquired, had to be evaluated and paid for, consequently the acquisition notifications covering these lands would be an equivocal act and cannot be treated to be acknowledging the full proprietary right of privileged jamma bane holders in such lands. It is axiomatic that a full proprietary ownership of land would entitle the owner to be the proprietor of all the sub-soil rights upto the centre of the earth, all surface rights on the land, all the rights in the usufruct of the land, full rights in all the trees standing on the land save except reserve trees and he would be owner of the air-column upto the sky over that land.

Such types of rights were never made available to the privileged or unprivileged Jamma Bane land holder during the time of Britishers after 1834 who administered Coorg nor during the time from 1899 when Coorg Regulation held the field and also never thereafter when 1964 Karnataka Act was enacted.

22. Now the stage is reached for us to have a stock of the situation. The aforesaid discussion regarding the rights of the Bane land holders in the back-ground of the relevant periods during which the Bane tenure existed in erstwhile Coorg State and thereafter leads us to the following conclusions:

(i) So long as Jamma Bane land owner occupied the Bane land as an adjunct of the warg land to which it remained attached, he had a limited interest or right in the said Jamma Bane land, namely, to enjoy the privilege of non-payment or revenue, privilege of grazing his cattle in the land, privilege of taking leaf manure from the leaves of the trees standing on the land for the purpose of supplying it as a manure to its warg land, privilege of taking fire wood and timber fire wood and timber required for his agricultural and domestic purposes.

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NC: 2024:KHC:29383 AND 1 OTHER

(ii) Such privileges enjoyed by the Jamma Bane holder do not entitle him to any sub-soil rights in the Jamma Bane land nor had he any interest of right in the standing trees and he could not utilise these trees for commercial purpose without payment of full timber value to the Government. He was also not the owner of the air column above the surface of the land. If the holder of a privileged Bane land sought to alienate his land he had to follow the procedure laid down by Rule 167 of Coorg Land Regulation 1899, which held the field prior to 1964 and if that was not done, the holder of privileged Jamma Bane land becomes liable to be summarily evicted as per Section 45 of the Coorg Land Regulation 1899, during the time when the said Regulation held the field.

iii) Once such Jamma Bane land ceases to be a Jamma Bane, whether privileged or unprivileged and became an alienated Bane, on the Jamma Bane being detached from the service of the Warg land under the orders of the authorities passed under Rule 136 of the Coorg Rules, the holder of such alienated Bane becomes entitled to cultivate the Bane land as a separate holding on payment of full assessment and his rights and obligations qua such land became that of an occupant of an unalienated fully assessed lands and he became entitled to all the rights and subject to all obligations of holder of such land governed by the provisions of Coorg Regulation of 1899, in the first instance, and later under the Karnataka Land Revenue Act, 1964.

iv) Even if a Jamma Bane holder got his Bane land detached from the warg land by voluntarily putting the land under cultivation of coffee or any other crop, and got it fully assessed and paid such assessment, even if he had not obtained orders of the authorities under Rule 136 of the Coorg Land Revenue Rules, the Bane land held by him had to be treated as alienated Bane and all that he had to

pay to the Government was full assessment as well as penal assessment if any that could be imposed on him and full timber value as laid down by Rule 136(5) of the Rules framed under the Coorg Land Revenue Regulation, 1899, and the alienated Bane held by him was not liable to be forfeited to the Government.

ANSWERS

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NC: 2024:KHC:29383 AND 1 OTHER In view of the aforesaid conclusion to which we have reached, it becomes obvious that the Point No. 1 will have to be answered in the negative by holding that holders of Jamma Bane lands both privileged and unprivileged are not full owners thereof but have limited privileges qua these lands as indicated above, subject to the rider that once these Jama Bane Lands became alienated Bane, the holders of such alienated Bane became entitled to the rights and obligations of occupants of unalienated fully assessed lands and were governed for that purpose by the provisions of the Coorg Land and Revenue Regulations so long as they held the field and thereafter they were entitled to the rights and subject to the obligations of the holder and occupant of unalienated fully assessed lands as per the Karnataka Land Revenue Act, 1964. 9.19. Relying on the above, she submits that the Court has committed an error by holding that the Jamma Bane lands are government lands, but no such claim has been made regarding Sagu Bane lands.

9.20. Rule 164 of the CLRR read with Section 45 and 143(f) and 145(xv) prohibits partition and alienation of privileged land by way of sale, gift, mortgage or release without permission of the Chief Commissioner. The said provisions are reproduced hereunder for easy reference:

45. Summary eviction in case of alienation of certain lands.-Except with the permission of the Assistant

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NC: 2024:KHC:29383 AND 1 OTHER Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands, of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, (and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government.

'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

143 Power to make rules. (f) generally, for carrying out the purposes of this Regulation.] 145 Bar of suits in certain matters. (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been

wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

9.21. On that basis she submits that the distinction between the privileged and unprivileged lands had been done away with in the year 1974, the reference to privileged tenure could only be to those enumerated under Rule 164 of the CLRR. 9.22. She refers to the decision of the Hon'ble Apex Court in the case of Kunnathat Thathehunni

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NC: 2024:KHC:29383 AND 1 OTHER Moopil Nair v. State of Kerala², more particularly paragraphs 7, 8, 9 and 10 thereof which are reproduced hereunder for easy reference:

7. The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional.

For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the Petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on AIR 1961 SC 552 : 1960 INSC 255

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NC: 2024:KHC:29383 AND 1 OTHER everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of

inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution.

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the Petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert.

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NC: 2024:KHC:29383 AND 1 OTHER The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in

Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCR p. 279]. S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pp. 299 and 300 of the Report, the relevant portion of which is in these terms:

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a

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NC: 2024:KHC:29383 AND 1 OTHER discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself". (p. 299 of the Report).

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, Section 4 and Section 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

9. The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(f) of the Constitution, also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5-A is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Article 19(1)(f) of the Constitution. Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed

land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders

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NC: 2024:KHC:29383 AND 1 OTHER may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a landholder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on landholders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment.

10. That the provisions aforesaid of the impugned Act are in their effect confiscatory is clear on their face. Taking the extreme case, the facts of which we have stated in the early part of this judgment, it can be illustrated that the provisions of the Act, without proposing to acquire the privately owned forests in the State of Kerala after satisfying the conditions laid down in Article 31 of the Constitution, have the effect of eliminating the private owners through the machinery of the Act. The petitioner in petition No. 42 of 1958 has been assumed to own 25 thousand acres of forest land. The liability under the Act would thus amount to Rs 50,000 a year, as already demanded from the petitioner on the basis of the provisional assessment under the provisions of Section 5-

A. The petitioner is making an income of Rs 3100 per year out of the forests. Besides, the liability of Rs 50,000 as aforesaid, the petitioner has to pay a levy of Rs 4000 on the surveyed portions of the said forest. Hence, his liability for taxation in respect of his forest land amounts

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NC: 2024:KHC:29383 AND 1 OTHER to Rs 54,000 whereas his annual income for the time being is only Rs 3100 without making any deductions for expenses of management. Unless the petitioner is very enamoured of the property and of the right to hold it, it may be assumed that he will not be in a position to pay the deficit of about Rs 51,000 every year in respect of the forests in his possession. The legal consequences of his making a default in the payment of the aforesaid sum of money will be that the money will be realised by the coercive processes of law. One can, easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold at public auction. In the absence of a bidder forthcoming to bid for the offset amount, the State ordinarily becomes the auction purchaser for the realisation of the outstanding taxes. It is clear, therefore, that apart from being discriminatory and imposing unreasonable restrictions on holding property, the Act is clearly confiscatory in character and effect. It is not even necessary to tear the veil, as was suggested in the course of the argument, to arrive at the conclusion that the Act has that unconstitutional effect. For these reasons, as also for the reasons for which the provisions of Sections 4 and 7 have been declared to be unconstitutional, in view of the provisions of Article 14 of the Constitution, all these operative sections of the Act, namely 4, 5-A and 7, must be held to offend Article 19(1)(f) of the Constitution also.

9.23. Relying on the above, she submits that both the amendment, the object, and the reasons of the Amendment Act are vague, and do not provide any reasons to bring about legislation to change the situation. The KLR Act preserves the rights, privileges, obligations and liability acquired, accrued or incurred under the CLRR, which can

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NC: 2024:KHC:29383 AND 1 OTHER be seen and gathered from Section 202(1)(b) of the KLR Act which is reproduced hereunder for easy reference:

"202(1)(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law;"

9.24. She refers to a decision of the Division bench of this Court in the case of B. Mohammad v. Deputy Commissioner, Mangalore³, more particularly para 28, 29 and 30 thereof, which are reproduced hereunder for easy reference:

28. Four rules are laid down in Heydon's case [(1584) 3 Co. Rep 7a.] in the matter of Interpretation of statutes. They are:

1. What was the Common law before the making of the Act:

2. What was the defect and mischief for which the Common law did not provide;

3. What remedy the Parliament has resolved and appointed to cure the defect;

4. The true reason of the remedy.

29. These principles have gained acceptance in various judicial pronouncements. The object of Rule 29A has to be understood keeping in mind the abovesaid rules.

(1998) 6 Kant LJ 30

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NC: 2024:KHC:29383 AND 1 OTHER Rule 29a was enacted to prevent a specific mischief noticed by the Legislature. If we follow what is stated in para 72 of Laxmamma's case [1983 (1) K.L.J. 417], then undoubtedly the object of Rule 29A would be defeated. It was never the intention of the rule makers to permit a grantee of a government land to alienate the grant even to the members of the Scheduled Caste/Tribe on and after 17.10.1974. There was no statutory recognition of such right hitherto, and by means of the Rule, such a condition imposed in any grant at the time of the grant was done away with. The legislature was of the view that these grantees are members of the weaker sections of the society; that they are exploited classes; that special statutory protection is needed to safeguard their interest; that land was granted to landless people and if alienation is allowed unchecked, then the object of the very grant would be defeated; that these persons should not be persons without any land even to erect a homestead. Act 2 of 1979 and its precursor Rule 29A were legislated with intention to achieve the above objects. Therefore, any interpretation to be placed to the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interest.

30. Therefore, the opinion of the Bench in respect of the questions framed is as follows:

(1) No; Rule 29A is not deemed to have been obliterated from backdate (retrospectively) in view of Section 4 and 11 of Karnataka Act 2 of 1979.

(2) In view of Rule 29A of the rule referred to supra, clause 12 of the condition referred to above continued to exist as modified.

(3) on and after 17.10.1974 i.e., the date with effect from which date Rule 29A was introduced and till 1.1.1979 the date of coming into force of Act 2 of 1979 referred to above, all transactions were subject to the said Rule 29A.

9.25. She submits that the amendment now made is contrary to both the CLRR and KLR Act. The

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NC: 2024:KHC:29383 AND 1 OTHER CLRR and the KLR Act provide for customary laws of Kodavas in Coorg viz., Section 45, 110, 143 and 145 and Rules 97(2), 135, 136, 164 and 167 of CLRR, which are continued in Section 220, 75(1), 79(2), 80, 100, 202(1)(b) and 202(4) of the KLR Act. Any law cannot violate customary laws. The present impugned amendment, being in violation of customary law, falls foul of Article 245 of the Constitution. Article 245 is reproduced hereunder for easy reference:

245. Extent of laws made by Parliament and by the Legislatures of States (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

9.26. The Jamma land tenure is a quasi-feudal tenure requiring payment of only half the revenue

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NC: 2024:KHC:29383 AND 1 OTHER assessment, and the male family members being required to provide military services in return to the King.

9.27. She submits that this Court in a decision in the case of C.A. Nanjappa -v- C.M. Thimaya⁴ has categorically held that Coorgis are governed by the Mitakshara School of Hindu law as modified by Coorg customary law, thereby accepting the existence of Coorg customary laws which would override and/or modify the Mitakshara law. 9.28. She reiterates that the Coorg customary law prohibits partition, alienation and/or division of the family, and in this regard, she relies on Section 107 of Maj.Gen.Rob Cole's 'A Manual of Coorg Civil Law' ['Cole's Manual' for short] which is reproduced hereunder for easy reference:

1963 Mys. LJ 487

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NC: 2024:KHC:29383 AND 1 OTHER

107. Some have claimed that all such coffee estates, however, acquired, should belong to the house, or the member to leave the house and live separately; but the former is opposed to usage and the long established custom of self-acquiring property, and the latter would be tantamount to a division of family which is prohibited.

9.29. She submits that the division of property would tantamount to the division of the family itself.

In this regard, she relies on Sections 189 and 192 of Rob Cole's Manual which are reproduced hereunder for easy reference:

189. What Constitutes division-A member is not to be considered as divided off from the family on the simple execution of a deed or list of partition or on his merely living apart; but he must have taken his share and lived apart.

192. Although the residence and partaking of food may be separate, the family may still be united. The marriages, celebration of the Huti and other feasts, the performance of the funeral rites and must occur in the chief house or family residence if the family be one and undivided. If division has taken place such ceremonies are performed by the divided member in his own residence; and he also selects a separate burial ground. The mode of performing the above ceremonies will therefore be a guide as to whether a family is divided or not.

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NC: 2024:KHC:29383 AND 1 OTHER 9.30. She submits that division of property is not recognized among Kodava/Coorg race. In this regard she relies on the Rob Cole's Manual. By relying on Sections 105 and 211 of Cole's Manual she submits that the Coorgis zealously guarded the right to ancestral property and continued the family name of the Patedara clan. Sections 105, 115 and 211, are reproduced hereunder for easy reference:

105. Mode of acquiring self-property- The mode laid down to be followed in acquiring self-property is worth enquiring into, and will show how jealously the Coorgs have guarded the rights of ancestral property and the law of primogeniture. At the time of ploughing and sowing and of harvesting, all the members of the family are bound to devote their whole time to the ancestral property. At the other seasons the Kikkaruru are only bound to give half the day, morning or afternoon, to the work of the house, and spend the other half as they like.

During such leisure hours, if they cultivate pepper, ginger, turmeric, oranges, plantain etc, and from the profits purchase cattle, pigs, fowl etc, such property is considered self-acquired. If such cultivation be carried on lands belonging to the house, one-tenth of the produce or value thereof has to be given to the house. If one other lands, the whole goes to the Kikkaruru.

115. Alienation not allowed-Division of property is not recognised among Coorgs, and no one can alienate any property landed or personal without the consent of all the members of the family. A father cannot alienate

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NC: 2024:KHC:29383 AND 1 OTHER landed property, whether ancestral or self acquired, without the consent of his sons grandsons"

211. Daughters- The unmarried daughter takes precedence. If there be more than one married daughter, any one may be selected, and a marriage by Mukka purje be adopted, and here descendants would bear the ancestral name and not that of the father. The property cannot be divided amongst the unmarried daughters. This shows how tenacious the Coorg are of the idea of continuing the family name. In the event of all the daughter being married, a son of any of them may be selected to be adopted into and to represent the family becoming extinct. In the event of the absence of those relations whose action in the matter is necessary, the more distant kindred, or the villagers in their absence, may authorise such marriage and adoptions 9.31. Due to the tyrannical rule of Raja Chikkaveera Rajendra, Coorgis turned to the British, who had assured them that the civil and religious rights of the Coorgis shall be respected. Thus, she submits that even the British having recognized the civil and religious usage of the Kodavas, never interfered with the practice thereof, the amendment now made will cause disruption in the civil and religious usages of the Kodavas.

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NC: 2024:KHC:29383 AND 1 OTHER 9.32. She refers to a Book by the name, Kodavas-a Pictorial by B.D. Ganapathy and by referring to page 12, 16, 18, 20, 24, 62 and 82 again reiterates that a Jamma Bane land belongs to a family, has an Aiyne mane, a Kaimada and a Thutengala and all the family members gather on auspicious and inauspicious occasions to offer their prayers.

9.33. The fragmentation of the land on account of partition would also result in commercialization of the land which would lead to the denudation of trees, and the construction of irregular and unauthorized buildings. Thus, she submits that this amendment would act contrary to the requirement of maintaining the ecologically sensitive variation in a proper manner. She submits that this is the reason why there have been landslides in the recent past in the district of Coorg.

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NC: 2024:KHC:29383 AND 1 OTHER 9.34. The custom of Coorg requires to be protected and in this regard she refers to the treatises by Salmond Jurisprudence and submits that the power of customary law is equal to that of statutory law and a custom may not only supplement but also derogate statutory law. On this ground, she submits that the customs which have been practiced by the Kodavas cannot be undone by the impugned amendment. The Kodavas would be entitled to act contrary to the statutory law by following their customs.

9.35. She refers to Article 13 of the Constitution of India which is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (2)The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3)In this article, unless the context otherwise requires-

(a)"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b)"laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4)Nothing in this article shall apply to any amendment of this Constitution made under article 368. 9.36. By referring to clause (2) of Article 13 of the Constitution of India she submits that the State shall not make any law which takes away the rights conferred by Part-III and by referring to clause 3(a) of Article 13 she submits that law includes customs and usage in the territory of India. Thus, she submits that the customs and traditions have the same value as a statutory law in force. There is a restriction/embargo on the State to enact any law contrary to

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NC: 2024:KHC:29383 AND 1 OTHER customary traditions, and even if there is a law enacted, the customs and traditions would prevail over such statutory law.

9.37. The customary law of Kodavas restricts them from alienating the joint family property, there is no individual right for any member of the family in the joint family property. The restriction imposed on such members for alienation is not an absolute restraint inasmuch as a member wishes to sell his share in the property, which has not been delineated, can do so in favour of other members of the joint family, thereby preserving the joint family of the Kodavas. In this regard she relies upon the decision of the Apex Court in the case of Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies

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NC: 2024:KHC:29383 AND 1 OTHER (Urban)5, more particularly para 25, 37, 38, 39, 40, 41, 42 and 44 which are reproduced hereunder for easy reference:

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our

Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Acts prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their bye-laws restricting membership based on their own criteria.

37. In our view, the High Court made a wrong approach to the question of whether a bye-law like Bye-law 7 could 2005 (5) SCC 632 : 2005 INSC 208

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NC: 2024:KHC:29383 AND 1 OTHER be ignored by a member and whether the authorities under the Act and the Court could ignore the same on the basis that it is opposed to public policy being against the constitutional scheme of equality or non-discrimination relating to employment, vocation and such. So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye-law or for interdicting the formation of cooperative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in Gherulal Parakh v. Mahadeodas Maiya [1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it

was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.

39. The appellant Society was formed with the object of providing housing to the members of the Parsi community, a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the cooperative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire

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NC: 2024:KHC:29383 AND 1 OTHER to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognised by the Acts enacted in that behalf concerning the cooperative movement. Even today, we have women's cooperative societies, we have cooperative societies of handicapped persons, we have cooperative societies of labourers and agricultural workers. We have cooperative societies of religious groups who believe in vegetarianism and abhor non-vegetarian food. It will be impermissible, so long as the law stands as it is, to thrust upon the society of those believing in say, vegetarianism, persons who are regular consumers of non-vegetarian food. Maybe, in view of the developments that have taken place in our society and in the context of the constitutional scheme, it is time to legislate or bring about changes in Cooperative Societies Acts regarding the formation of societies based on such a thinking or concept. But that cannot make the formation of a society like the appellant Society or the qualification fixed for membership therein, opposed to public policy or enable the authorities under the Act to intervene and dictate to the society to change its fundamental character.

40. Another ground relied on by the authorities under the Act and the High Court to direct the acceptance of Respondent 3 as a member in the Society is that the bye- law confining membership to a person belonging to the Parsi community and the insistence on Respondent 2 selling the building or the flats therein only to members of the Parsi community who alone are qualified to be members of the Society, would amount to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act. Section 10 of the Transfer of Property Act cannot have any application to transfer of membership. Transfer of membership is regulated by the bye-laws. The bye-laws in that regard are not in challenge and cannot effectively be challenged in view of what we have held above. Section 30 of the Act itself places restriction in that regard. There is no plea of invalidity attached to that provision. Hence, the restriction in that regard cannot be invalidated or ignored by reference to Section 10 of the Transfer of Property Act.

41. Section 10 of the Transfer of Property Act relieves a transferee of immovable property from an absolute

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NC: 2024:KHC:29383 AND 1 OTHER restraint placed on his right to deal with the property in his capacity as an owner thereof. As per Section 10, a condition restraining alienation would be void. The section applies to a case where property is transferred subject to a condition or limitation absolutely restraining the transferee from parting with his interest in the property. For making such a condition invalid, the restraint must be an absolute restraint. It must be a restraint imposed while the property is being transferred to the transferee. Here, Respondent 2 became a member of the Society on the death of his father. He subscribed to the bye-laws. He accepted Section 30 of the Act and the other restrictions placed on a member. Respondent 2 was qualified to be a member in terms of the bye-laws. His father was also a member of the Society. The allotment of the property was made to Respondent 2 in his capacity as a member. There was really no transfer of property to Respondent 2. He inherited it with the limitations thereon placed by Section 31 of the Act and the bye-laws. His right to become a member depended on his possessing the qualification to become one as per the bye-laws of the Society. He possessed that qualification. The bye-laws provide that he should have the prior consent of the Society for transferring the property or his membership to a person qualified to be a member of the Society. These are restrictions in the interests of the Society and its members and consistent with the object with which the Society was formed. He cannot question that restriction. It is also not possible to say that such a restriction amounts to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act.

42. The restriction, if any, is a self-imposed restriction. It is a restriction in a compact to which the father of Respondent 2 was a party and to which Respondent 2 voluntarily became a party. It is difficult to postulate that such a qualified freedom to transfer a property accepted by a person voluntarily, would attract Section 10 of the Act. Moreover, it is not as if it is an absolute restraint on alienation. Respondent 2 has the right to transfer the property to a person who is qualified to be a member of the Society as per its bye-laws. At best, it is a partial restraint on alienation. Such partial restraints are valid if imposed in a family settlement, partition or compromise of disputed claims. This is clear from the decision of the Privy Council in Mohd. Raza v. Abbas Bandi Bibi [(1932) 59 IA 236 : AIR 1932 PC 158] and also from the decision of the Supreme Court in Gummanna Shetty v.

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NC: 2024:KHC:29383 AND 1 OTHER Nagaveniamma [(1967) 3 SCR 932 : AIR 1967 SC 1595] . So, when a person accepts membership in a cooperative society by submitting himself to its bye-laws and secures an allotment of a plot of land or a building in terms of the bye-laws and places on himself a qualified restriction in his right to transfer the property by stipulating that the same would be transferred back to the society or with the prior consent of the society to a person qualified to be a member of the society, it cannot be held to be an absolute restraint on alienation offending Section 10 of the Transfer of Property Act. He has placed that restriction on himself in the interests of the collective body, the society. He has voluntarily submerged his rights in that of the society.

44. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by Respondent 2 only in terms of the bye-laws of the Society and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its bye-laws. The direction given by the authority to the appellant to admit Respondent 3 as a member is set aside. Respondent 3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by Respondent 2 in disregard of the bye-laws of the Society and without the prior consent of the Society.

9.38. She also relies upon a decision in The Kerala Education Bill, 1957. vs Unknown6, more particularly paras 15, 19, 20, 21 and 41, which are reproduced hereunder for easy reference:

15. The true meaning, scope and effect of Art. 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of Chiranjit Lal Chowdhuri v. The Union of India and others ([1950] S.C.R. 869). In Budhan Choudhry v. The State of AIR 1958 SC 956 : 1958 INSC 64

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NC: 2024:KHC:29383 AND 1 OTHER Bihar a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that Article. Recently in the case of Ram Krishna Dalmia and others v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279), the position was reviewed at length by this Court by its judgment delivered on March 28, 1958, and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of Mohd. Hanif Quareshi v. The State of Bihar ([1959] S.C.R. 629), in the following words :-

"The meaning, scope and effect of Art. 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjit Lal Chowdhury v. The Union of India ([1950] S.C.R. 869) and ending with the recent case of Ram Krishna Dalmia v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279). It is now well-established that while Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the

burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may continue its restrictions to those cases where the need is deemed

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NC: 2024:KHC:29383 AND 1 OTHER to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In the judgment of this Court in Ram Krishna Dalmia's case ([1959] S.C.R. 279) the statutes that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion and, indeed, no attempt has been made in, that behalf by learned counsel. We, therefore, proceed to examine the impugned provisions in the light of the aforesaid principles enunciated by this Court.

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in Biswambar Singh v. The State of Orissa ([1954] S.C.R. 842, 855) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under clause 3(2) can be exercised only "for the purpose of providing facilities for general education, special education and for the training of teachers". It is "for the purpose of providing such facilities" that the

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NC: 2024:KHC:29383 AND 1 OTHER three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose. It is true that the word "may" has been used in sub-clause (3), but, according to the well known rule of construction of statutes, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the Government will be under an obligation to exercise its discretion in furtherance of such purpose and no question of the arbitrary exercise of discretion can arise. [Compare Julius v. Lord Bishop of Oxford ([1880] 5 app. Cas 214)]. If in actual fact any discrimination is made by the Government then such discrimination will be in violation of the policy and principle deducible from the said Bill itself and the court will then strike down not the provisions of the Bill but the discriminatory act of the Government. Passing on to clause 14, we find that the power conferred thereby on the Government is to be exercised only if it appears to the Government that the manager of any aided school has neglected to perform the duties imposed on him and that the exercise of the power is necessary in public interest. Here again the principle is indicated and no arbitrary or unguided power has been delegated to the Government. Likewise the power, under clause 15(1) can be exercised only if the Government is satisfied that it is necessary to exercise it for "standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing the education of any category under their direct control" and above all the exercise of the power is necessary "in the public interest". Whether the purposes are good or bad is a question of State policy with the merit of which we are not concerned in the present discussion. All that we are now endeavouring to point out is that the clause under consideration does lay down a policy for the

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NC: 2024:KHC:29383 AND 1 OTHER guidance of the Government in the matter of the exercise of the very wide power conferred on it by that clause. The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly - a proviso which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to clause 36. The power given to the Government by clause 36 to make rules is expressly stated to be exercised "for the purpose of carrying into effect the provisions of this Act". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under clause 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective. If no amendments are made the rules come into operation after the period of 14 days

expires. Even in this latter event the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. Learned counsel appearing for the State of Kerala submitted in picturesque language that here was what could be properly said to be legislation at two stages and the measure that will finally emerge consisting of the Bill and the rules with or without amendment will represent the voice of the Legislative Assembly itself and, therefore, it cannot be said that an unguided and uncontrolled power of legislation has been improperly delegated to the Government. Whether in approving the rules laid before it the Legislative Assembly acts as the Legislature of Kerala or acts as the delegate of the Legislature which consists of the Legislative Assembly and the Governor is, in the absence of the standing orders and rules of business of the Kerala Legislative Assembly, more than we can determine. But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including clause 36, the Kerala Legislature has, by clause 15 and clause 37 provided further safeguards. In this connection we must bear in

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NC: 2024:KHC:29383 AND 1 OTHER mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed. For reasons stated above it appears to us that the charge of unconstitutionality of the several clauses which come within the two questions now under consideration founded on Art. 14 cannot be sustained. The position is made even clearer when we consider the question of the validity of clause 15(1) for, apart from the policy and principle deducible from the long title and the preamble of the Bill and from that sub-clause itself, the proviso thereto clearly indicates that the Legislature has not abdicated its function and that while it has conferred on the Government a very wide power for the acquisition of categories of schools it has not only provided that such power can only be exercised for the specific purposes mentioned in the clause itself but has also kept a further and more effective control over the exercise of the power, by requiring that it is to be exercised only if a resolution is passed by the Legislative Assembly authorising the Government to do so. The Bill, in our opinion, comes not within category (iii) mentioned in Ram Krishna Dalmia's case ([1959] S.C.R. 279) as contended by Shri G. S. Pathak but within category

(iv) and if the Government applies the provisions in violation of the policy and principle laid down in the Bill the executive action will come under category (v) but not the Bill and that action will have to be struck down. The result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Art. 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative.

20. Re. Question 2 : Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Art. 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve

the same. It is obvious that a minority

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NC: 2024:KHC:29383 AND 1 OTHER community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

21. As soon as we reach Art. 30(1) learned counsel for the State of Kerala at once poses the question : what is a minority ? That is a term which is not defined in the Constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what ? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union ? The position taken up by the State of Kerala in its statement of case filed herein is as follows:-

"There is yet another aspect of the question that falls for consideration, namely, as to what is a minority under Art. 30(1). The State contends that Christians, a certain section of whom is vociferous in its objection to the Bill on the allegation that it offends Art. 30(1), are not in a minority in the State. It is no doubt true that Christians are not a mathematical majority in the whole State. They constitute about one-fourth of the population; but it does not follow therefrom that they form a minority within the meaning of Art. 30(1). The argument that they do, if pushed to its logical conclusion, would mean that any section of the people forming under fifty per cent. of the population should be classified as a minority and be dealt with as such.

Christians form the second largest community in Kerala State; they form, however, a majority community in certain area of the State. Muslims form the third largest community in the State, about one- seventh of the total population. They also, however, form the majority community in certain other areas of the State. (In I.L.R. (1951) 3 Assam 384, it was held

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NC: 2024:KHC:29383 AND 1 OTHER that persons who are alleged to be a minority must be a minority in the particular region in which the institution involved is situated)."'

The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Art. 29(1) and 30(1) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. A little reflection will at once show that this is not a satisfactory test. Where is the line to be drawn and which is the unit which will have to be taken ? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards ? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality. Thus Anglo-Indians or Christians or Muslims may congregate in one particular suburb of a town or one particular ward of a municipality and they may be in a majority there. According to the argument of learned counsel for the State of Kerala the Anglo-Indians or Christians or Muslims of that locality, taken as a unit, will not be a "minority" within the meaning of the Articles under consideration and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo-Indian or Christian community happen to reside in another suburb of the same town or another ward of the same municipality and their number be less than that of the members of other communities residing there, then those members of the Anglo-Indian or Christian community will be a minority within the meaning of Arts. 29 and 30 and will be entitled to establish and maintain educational institutions of their choice in that locality. Likewise the Tamilians residing in Karolbagh, if they happen to be larger in number than the members of other communities residing in Karolbagh, will not be entitled to establish and maintain a Tamilian school in Karolbagh, whereas the Tamilians residing in, say, Daryaganj where they may be less numerous than the members of other communities residing in Daryaganj will be a minority or section within the meaning of Arts. 29 and 30. Again Bihari labourers residing in the industrial areas in or near Calcutta where they may be the majority in that locality will not be entitled to have the minority rights and those Biharis will have no

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NC: 2024:KHC:29383 AND 1 OTHER educational institution of their choice imparting education in Hindi, although they are numerically a minority if we take the entire city of Calcutta or the State of West Bengal as a unit. Likewise Bengalis residing in a particular ward in a town in Bihar where they may form the majority will not be entitled to conserve their language, script or culture by imparting education in Bengali. These are, no doubt, extreme illustrations, but they serve to bring out the fallacy inherent in the argument on this part of the case advanced by learned counsel for the State of Kerala. Reference has been made to Art. 350A in support of the argument that a local authority may be taken as a unit. The illustration given above will apply to that case also. Further such a construction will necessitate the addition of the words "within their jurisdiction" after the words "minority groups". The last sentence of that Article also appears to run counter to such argument. We need not, however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to

the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo- Indians will certainly be minorities in the State of Kerala. It is admitted that out of the total population of 1,42,00,000 in Kerala there are only 34,00,000 Christians and 25,00,000 Muslims. The Anglo-Indians in the State of Travancore-Cochin before the re- organisation of the States numbered only 11,990 according to the 1951 Census. We may also emphasise that question 2 itself proceeds on the footing that there are minorities in Kerala who are entitled to the rights conferred by Art. 30(1) and, strictly speaking, for answering question 2 we need not enquire as to

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NC: 2024:KHC:29383 AND 1 OTHER what a minority community means or how it is to be ascertained.

41. But then, it was argued that the policy behind Art. 30(1) was to enable minorities to establish and maintain their own institutions, and that that policy would be defeated if the State is not laid under an obligation to accord recognition to them. Let us assume that the question of policy can be gone into, apart from the language of the enactment. But what is the policy behind Art. 30(1) ? As I conceive it, it is that it should not be in the power of the majority in a State to destroy or to impair the rights of the minorities, religious or linguistic. That is a policy which permeates all modern Constitutions, and its purpose is to encourage individuals to preserve and develop their own distinct culture. It is well- known that during the Middle Ages the accepted notion was that Sovereigns were entitled to impose their own religion on their subjects, and those who did not conform to it could be dealt with as traitors. It was this notion that was responsible during the 16th and 17th Centuries for numerous wars between nations and for civil wars in the Continent of Europe, and it was only latterly that it came to be recognised that freedom of religion is not incompatible with good citizenship and loyalty to the State, and that all progressive societies must respect the religious beliefs of their minorities. It is this concept that is embodied in Arts. 25, 26, 29 and 30. Article 25 guarantees to persons the right to freely profess, practice and propagate religion. Article 26 recognises the right of religious denominations to establish and maintain religious and charitable institutions. Article 29(1) protects the rights of sections of citizens to have their own distinct language, script or culture. Article 30(1) belongs to the same category as Arts. 25, 26 and 29, and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minorities should have the right to live, and

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NC: 2024:KHC:29383 AND 1 OTHER should be allowed by the State to live, their own cultural life as regards religion or language. That is the true scope of the right conferred under Art. 30(1), and the obligation of the State in relation thereto is purely negative. It cannot prohibit the establishment of such institutions, and it should not interfere with the administration of such institutions by the

minorities. That right is not, as I have already pointed out, infringed by Clause (20). The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Art. 30(1). The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the State various obligations in relation to the minorities apart from what is involved in Art. 30(1). Thus, Art. 30(2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up :

- (1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities, religious or linguistic.
- (2) The State is under a negative obligation as regards those institutions, not to prohibit their

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NC: 2024:KHC:29383 AND 1 OTHER establishment or to interfere with their administration.

Clause (20) of the Bill violates neither of these two obligations. On the other hand, it is the contention of the minorities that must, if accepted, result in discrimination by the State. While recognised institutions of the majority communities will be subject to clause (20), similar institutions of minority communities falling within Art. 30(1) will not be subject to it. The former cannot collect fees, while the latter can. This surely is discrimination. It may be stated that learned counsel for the minorities, when pressed with the question that on their contention Art. 45 must become a dead letter, answered that the situation could be met by the State paying compensation to the minority institutions to make up for the loss of fees. That serves clearly to reveal that what the minorities fight for is what has not been granted to them under Art. 30(2) of the Constitution, viz., aid to them on the ground of religion or language. In my opinion, there is no justification for putting on Art. 30(1) a construction which would put the minorities in a more favoured position than the majority communities.

9.39. By relying on the above she submits that any action of the State cannot negate the customary law/practice of a citizen and in this case, the customs and traditions practised by the Kodava people.

9.40. She relies upon the decision of the Apex Court in Sardar Syedna Taher Saifuddin Saheb

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NC: 2024:KHC:29383 AND 1 OTHER vs. State of Bombay⁷, more particularly para 59 and 62 and submits Article 25 of the Constitution gives every person a right to achieve his purpose, practice and propagate religion, as such the Kodava race is also required to freely practice the civil and religious usages even if such practice is contrary to the law. Paras 59 & 62 are reproduced hereunder for easy reference:

59. It is admitted, however, in the present case that the Dai as the head of the denomination has vested in him the power, subject to the procedural requirements indicated in the judgment of the Privy Council, to excommunicate such of the members of the community as do not adhere to the basic essentials of the faith and in particular those who repudiate him as the head of the denomination and as a medium through which the community derives spiritual satisfaction or efficiency immediately from the God-head. It might be that if the enactment had confined itself to dealing with excommunication as a punishment for secular offences merely and not as an instrument for the self preservation of a religious denomination the position would have been different and in such an event the question as to whether Articles 25 and 26 would be sufficient to render such legislation unconstitutional might require serious consideration. That is not the position here. The Act is not confined in its AIR 1962 SC 853

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NC: 2024:KHC:29383 AND 1 OTHER operation to the eventualities just now mentioned but even excommunication with a view to the preservation of the identity of the community and to prevent what might be a schism in the denomination is also brought within the mischief of the enactment. It is not possible, in the definition of excommunication which the Act carries, to read down the Act so as to confine excommunication as a punishment of offences which are unrelated to the practice of the religion which do not touch and concern the very existence of the faith of the denomination as such. Such an exclusion cannot be achieved except by rewriting the section.

62. Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his administration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25(1) and rendering the protection illusory.

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NC: 2024:KHC:29383 AND 1 OTHER 9.41. She refers to the decision in DAV College Jalandhar vs. State of Punjab⁸, more particularly para 9, 10 and 18 which are reproduced hereunder for easy reference:

9. Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities have to be determined in relation to the population of the State. On this aspect Das, C.J., in Kerala Education Bill case speaking for the majority thought that there was a fallacy in the suggestion that a minority or section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically, minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject-matter of Item 11 of the State list, subject only to the provisions of Entries 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and AIR 1971 SC 1737 : 1971 INSC 142

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NC: 2024:KHC:29383 AND 1 OTHER consequently the minority must be determined by reference to the entire population of that State.

10. It is undisputed, and it was also conceded by the State of Punjab, that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was however contested. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that that language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1).

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha -- in Hindi language and Devnagri character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi or Sanskrit. The belief is that the name of the script

Devnagri is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

9.42. She refers to the decision in Virendra Nath Gupta and others vs Delhi Administration

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NC: 2024:KHC:29383 AND 1 OTHER and others⁹, more particularly para 7, which is reproduced hereunder for easy reference:

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers 1990 SCC (L&S)

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NC: 2024:KHC:29383 AND 1 OTHER with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See In re the Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] ; Ahmedabad St. Xavers College Society v. State of Gujarat [(1974) 1 SCC 717 : (1975) 1 SCR 173] ; Lilly Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134 : (1979) 1 SCR 820] ; Frank Anthony Public School Employees' Association v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35] ; Y. Theclamma v.

Union of India [(1987) 2 SCC 516] ; All Bihar Christian Schools Association v. State of Bihar [(1988) 1 SCC 206] . Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

9.43. She refers to the decision in Jagdev Singh Sidhanti v. Pratap Singh Daulta¹⁰ , more particularly para 26 thereof, which is reproduced hereunder for easy reference:

AIR 1965 SC 183 : 1964 INSC 33

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NC: 2024:KHC:29383 AND 1 OTHER

26. It is in the light of these principles, the correctness of the findings of the High Court that Sidhanti was guilty of the corrupt practice of appealing for votes on the ground of his language and of asking the voters to refrain from voting for Daulta on the ground of the language of Daulta may be examined. The petition filed by Daulta on this part of the case was vague. In para 11 of his petition it was averred that Sidhanti and his agents made a systematic appeal to the audience to vote for Sidhanti and refrain from voting for Daulta "on the ground of religion and language", and in para -12 it was averred that in the public meetings held to further the prospects of Sidhanti in the election, Sidhanti and his agents had made systematic appeals to the electorate to vote for him and refrain from voting for Daulta "on the ground of his religion and language". A bare perusal of the particulars of the corrupt practice so set out in paras 11 and 12 are to be found in Schedules. 'C' and 'D' clearly shows that it was the case of Daulta that Sidhanti had said that if the electorate wanted to protect their language they should vote for the Haryana Lok Samiti candidate.

Similar exhortations are said to have been made by the other speakers at the various meetings. It is stated in Schedule 'D' that resolutions were passed at the meetings urging upon the Government to "abolish Punjabi from Haryana", that many speakers said that the Haryana Lok Samiti will fight for Hindi for Haryana and that they were opposed to the teaching of Punjabi in Haryana. These exhortations to the electorate to induce the Government to change their language policy or that a political party will agitate for the protection of the language spoken by the residents of the Haryana area do not fall within the corrupt practices of appealing for votes on the ground of language of the candidate or to refrain from voting on the ground of language of the contesting candidate.

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NC: 2024:KHC:29383 AND 1 OTHER 9.44. By relying on the above Judgments, she submits that the fundamental duties not only apply to the citizens but also to the State inasmuch as in terms of Article 51-A(f), there is a duty cast on the state to preserve the rich heritage of composite culture. The State by way of impugned amendment has done away with the culture of Kodavas thereby violating Article 51-A(f), which is reproduced hereunder for easy reference:

51-A. Fundamental duties -

(f): to value and preserve the rich heritage of our composite culture;

9.45. She submits that the claim of the State that Jamma Bane lands are government lands are completely false inasmuch as the Bane lands of Coorg were never the properties of the British government nor of the Rajas. The Banes continued to be under private ownership of the

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NC: 2024:KHC:29383 AND 1 OTHER joint family, the British, never being the owner, had not handed over the bane land to the Indian government after the independence. The government lands under the CLRR were called paisari land. Jamma Bane land having a distinct name, not being a paisari land, is not a government land. Under Article 294(b) there is an obligation on the State to preserve the customs and traditions of the Kodavas which is reproduced hereunder for easy reference:

294(b): all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, 9.46. By referring to Section 6 of the Karnataka General Clauses Act, 1899, she submits that repeal of any enactment will not affect any rights, privileges or obligations acquired, accrued or incurred under any enactment so

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NC: 2024:KHC:29383 AND 1 OTHER repealed. Thus, she submits that the repeal of CLRR will not take away the rights invested with the Kodavas. Section 6 of the Karnataka General Clauses Act, 1899 is reproduced hereunder for easy reference:

6. Effect of repeal.- Where this Act or 1 [any Mysore Act or Karnataka Act]1 made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,-

(a) revive anything not in force or existing at the time at which the repel takes effect;
or

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactments so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such, right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

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NC: 2024:KHC:29383 AND 1 OTHER 9.47. She submits that customary law continues to be administered even after the Constitution came into being. In this regard, she refers to a decision in S.N. Rama Shetty & others vs. Kongera T. Appanna¹¹, pages 222 and 223, which are reproduced hereunder for easy reference "Whatever might be the quantity of timber and fire-wood cut by the defendant, it is urged that it was the property of Government and not that of the plaintiff and that therefore the defendant is not liable for damages to the plaintiff. This argument is founded on the character of the holding of what is known as 'bane' land in Coorg. In Appendix 3 'Definitions' given in the Coorg Revenue Manual, 'bane' is described as 'forest land granted for the service of the holding of wet land to which it is allotted, to be, held free of revenue by the cultivator for grazing, and to supply leaf manure, firewood and timber required for the agricultural and domestic purposes of the cultivator, so long as he continues in possession of the wet land.' Such bane may be attached to wet land held under jama tenure, umbli tenure or sagu tenure. The lands held in jama or umbli tenure are not fully assessed and are not alienable while land held under sagu tenure is alienable. Since the bane is granted only for the purpose of making limited use of the forest produce and the holder has no right to cut and remove the timber out of 1959 Mys.LJ 218

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NC: 2024:KHC:29383 AND 1 OTHER the bane land or for purposes other than for the service of the main holding, it is urged that the timber is the property of Government. The Coorg Land and Revenue Regulation 1899 does not define any of the tenures mentioned above and the definition referred to above is not, strictly speaking, a statutory definition. There is nothing in the above Regulation to alter or affect the character of any of the above tenures. We have therefore to see what the character of a bane tenure is as understood by customary law and practice. In Baden-Powell's book on Land Systems in British India, it is stated as follows:-

"The bane.....is destined to supply the warg-holder with grazing, timber, firewood, and herbage which he burns on the rice-fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural and domestic wants of the holder; and if timber, etc., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood..... In the jamma tenure, as the bane is included in the sanad, it is virtually a part of the property. In the sagu tenure, there is no sanad but the attached area of bane must be held and used subject to the same conditions. Under these circumstances, the bane cannot be regarded as actually the property of the tenure holder, nor, on the other hand, as land at the disposal of Government. It is which is held as an appendage to a warg or estate, or to a sagu holding, in a sort of trust, or on condition for a certain use".

In the Note by Sir J. B. Lyall on Tenures in Coorg, printed as Appendix IV in the Coorg Revenue Manual, there is nothing to indicate any difference from what is stated above in regard to the character of a bane holding. It would therefore

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NC: 2024:KHC:29383 AND 1 OTHER appear that bane land held in association with privileged, warg holding like jamma and umbli land is in the possession and dominion of the holders and that though they have no right to cut the timber and dispose it of for purposes other than for the service of the main holding they can do so subject to payment of seignorage and that there is no absolute prohibition to their cutting the timber. In fact, the rules framed in regard to this matter both under the Coorg Land and Revenue Regulation and the Forest Regulation provide for the cutting of the timber by the holder on payment of seignorage for the 'redemption' of the timber and they do not contemplate Government permitting any one other than the holder to cut or remove timber. The seignorage itself represents not the full value of the timber, but a part of the value fixed from time to time presumably with reference to the prevailing rates at the time of the promulgation of the rules. It is also significant to note that in the rules promulgated in 1953, provision is made for extraction and disposal of timber through Government agency and that the holder is entitled to 50 per cent of the net proceeds. The nature of the tenure and the above rules appear to indicate that the holder has at least dominion over the timber and whatever his accountability to Government may be, any third party who interferes with the bane land is accountable to the holder. Therefore, the defendant's contention on this matter has no force.

As regards the rates, the learned Judge has adopted the rates given in the plaint since the rates fetched at the sales held by the Forest Department at Hunsur on 18-2-48 were higher than the rates mentioned in the plaint. The defendant has examined some witnesses to speak to the rates but their evidence is of little value. D. W. 2 Basaviah says that one Baliah has filed a suit against him claiming Rs. 2-4-0 per cubic foot of honne timber. He says nandi was sold at Re. 1 and

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NC: 2024:KHC:29383 AND 1 OTHER rose-wood at Rs. 2-4-0 per cubic foot. He has not maintained any accounts. D. W. 3 Anniah who is in the timber trade speaks about timber sales, a statement of which is contained in a letter dated 23-6-49 (Ex. B-7) addressed to him by the proprietors of Gowri Shankar Mills, Hassan, to whom he says he had supplied timber. Neither his account books nor his customers' account books are produced. The rates in the letter can hardly be taken into consideration as evidence. D.W. 4 Subbaraya Setty speaks to the rates as mentioned in Ex. B-4 which purports to be a statement of account sent by him to the defendant. It is dated 25-1-49. It no doubt mentions the rates at which different varieties of timber were sold. But this witness has not produced his accounts and the rates mentioned in the statement of account contained in the letter can hardly be regarded as evidence. He has also produced Ex. B-8, a communication dated 28-2-48 from the Chief Forest Officer, Coorg. Amongst the varieties of timber mentioned in it, the only relevant variety for which the rate is given is Biti and the rate is Rs. 2-3-0. But the dimensions of the logs are not given. Apart from the evidentiary value to be attached to a communication like this, it is difficult to take the rate into consideration in the absence of details regarding the dimensions of the logs, for the rate would depend on them also. Thus we are left with the rates fetched in the Forest Departmental sale. There is no reason to dispute their correctness or authenticity". 9.48. She relies on a decision in C.A. Nanjappa vs. C.M. Thimmaya¹², more particularly pages 1963 Mys.LJ 486

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NC: 2024:KHC:29383 AND 1 OTHER 487-489 which are reproduced hereunder for easy reference:

"The short point for consideration in this appeal is whether the finding of the learned District Judge that the suit filed by the appellants in a Civil Court is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation, is correct. It is idle for the appellants to contend that the suit is one for readjustment or reallocation of the maintenance provision among the members of the Coorg family and not for a partition of the properties. The parties are Coorgis. They are governed by Mithakshara School of Hindu Law as modified by the Coorg Customary Law. The suit as brought now is clearly one for partition of the suit schedule properties which are admittedly joint family properties. It is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation. The contention of the appellants that the suit as brought by them is not a suit for partition as contended by the respondents but is only a suit for readjustment of the maintenance division effected on 10-10-1923 is an after-thought. We are unable to accept the contention of the learned Counsel for the appellants that once the trial Court allowed the amendment prayed for by the appellants and permitted them to delete the word 'Partition' in paragraph (7) of the plaint and to add the fresh allegations to the effect that the suit is only for increased maintenance, the suit cannot be considered to be one for fresh partition. There is no substance in the said contention. The allegations made by the appellants in the plaint make it abundantly clear that the suit is one for readjustment or reallocation of the properties allotted to the two branches under the deed dated 10-10-1923. Even on the basis that the suit is one for readjustment of the properties the suit is not maintainable. S. 145 of the Coorg Land and Revenue Regulation unmistakably ousts

the jurisdiction of the Civil Courts to entertain such suits. In para 160 of his book "A Manual of Coorg Civil Law" Major General Rob. Cole, Superintendent of Coorg dealing with the question whether a partition of the joint family proper-ties amongst the members of the Coorg family could be effected has stated:

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NC: 2024:KHC:29383 AND 1 OTHER "Partition not allowed-It was not customary among Coorgs to acquire or hold land, houses, &c., separately. Since about 1805 however some families quarrelled and appealed to the former Rajas, who directed that they should in accordance with the Hindu Law be allowed to divide. Subsequent to our assumption of the Government of the country several other families have similarly applied to the Courts and obtained decrees for partition; whilst others have divided off amicably amongst themselves. In 1858 the Thakkas and headmen of the Coorgs represented the loss and ruin occasioned to their ancient houses by this innovation and system of partition; and the Judicial Commissioner in additional Spl. A. S. No. 117 of 1958-59 passed a decree declaring that division was contrary to the ancient custom of Coorg and ever since division has been strictly inter directed."

The learned Counsel for the appellants is not able to point out to us any decision of any Court which has taken a contrary view. S. 145 of the Coorg Land and Revenue Regulation prohibits division of the joint family properties amongst the members of the Coorg family whether it be a partition or other allotment amongst the members of the family. According to the section a suit for allotment of the joint family properties even for purposes of maintenance is excluded from the jurisdiction of a Civil Court. S. 145 of the Coorg Land and Revenue Regulation in so far as it relates for our purpose reads thus:

"145. Bar of suits in certain matters-Except as otherwise pro- vided by this Regulation no suit shall be brought in any Civil Court, in respect of any of the following matters, namely.....

(xv) any claim for the partition of an estate or holding or any question as to the allotment of land when such estate holding or land is one of which the land-

revenue has been wholly or partly assigned or released or which is held as joint family property by persons of the Coorg race or any claim for the distribution of land revenue on partition or any other question connected therewith not being a question as to the partibility of, or the title to, the property of which partition is sought;....."

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NC: 2024:KHC:29383 AND 1 OTHER The above provision is quite clear. It is idle for the appellants to contend that in spite of such a clear provision the jurisdiction of a Civil Court to deal with the allotment of the joint family properties of a Coorg family is within the jurisdiction of a Civil Court.

The learned District Judge, is, therefore, justified in holding that the suit filed by the appellants was not maintainable and dismissing the same."

9.49. Relying on the above judgements she submits that the lands granted by the King under the Jamma Tenure system became the property of the house/family and not of the individual, and any grant made by the King is to be enjoyed by all members of the family. It is the family name that is entered in the SYST records as an abstract owner. In the said records the name of Patedara of the family who is managing the affairs of the family is entered into. The names of all other family members, i.e. maintenance division members, are entered in the 6th column of the Jamma Bandi. Upon computerization, the family name is shown at the head of the list in the 9th column, followed by the name of

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NC: 2024:KHC:29383 AND 1 OTHER Patedara and thereafter, maintenance division holders, and now, after the impugned amendment, a partition deed with a revenue sketch is insisted for entry of the name of any maintenance division holder.

9.50. A Sannad was granted for every holding which would also include a Jamma Bane which was held at half the ordinary assessment by the eldest member of the family.

9.51. By referring to G. Richter's Gazetteer of Coorg, page 252, she submits that since Coorg had no standing army, the Kodavas who rendered military service were not paid any salary whilst on active duty, instead Kodavas were allowed to make use of Jamma Bane land at half assessment. The said extract is hereunder reproduced for easy reference:

"As the Coorg force was not a standing army, it received no pay. Whilst on active duty as

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NC: 2024:KHC:29383 AND 1 OTHER guards or during warfare, the soldiers were maintained at the public expense, and being remarkable for their predatory habits, they largely shared with the Rájahs in the spoil. Without discipline and organization, the Coorgs displayed their strength chiefly behind their stockades and Cadangas. In the open field they rarely faced the attacks of regular troops."

9.52. She submits that the issue in question in Cheekkere's case was as regards the entitlement of the government to the mines and minerals in the subsoil of Bane land. There is no distinction made between the Jamma Bane land or other Bane lands. However, this court singled out Jamma Bane land and held Jamma Bane land to be government land, which is not correct. As aforesaid, she submits that Jamma Bane land was never government land. She further submits that Cheekkere Poovaiah's decision (*supra*) would not apply to the present case since that was one relating to the sub-soil rights, more particularly relating to

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NC: 2024:KHC:29383 AND 1 OTHER minerals in the sub-soil, which vests with the government. If there are no minerals in the land and the land is used for agricultural activities and or customary religious practices of Kodavas, the State cannot have any right on such a land. Thus, even if the decision in Cheekere Poovaiah's case is accepted to be correct, she submits that the decision would only apply in regard to mineral rights in the sub-soil and not as regards rights of ownership by the entire family in Jamma Bane land. 9.53. She refers to the decision in the case of Threesiamma Jacob & others -v- Geologist Department of Mining & Geology & others¹³, more particularly paras 51, 54, 55 and 57 thereof which are reproduced hereunder for easy reference:

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NC: 2024:KHC:29383 AND 1 OTHER

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium).

Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals - the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as

Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively²⁶ providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines

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NC: 2024:KHC:29383 AND 1 OTHER stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5²⁷ for prohibition or regulation of mining activity in such mineral. Under Section 10²⁸ of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.

9.54. She submits that even after the KLR Act and Rules substituted the CLRR, the rights created under CLRR could not be taken away. Section 202 of the Repeal and Savings clauses of KLR saves all rights, privileges, obligations and liability accrued or incurred, this aspect has not

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NC: 2024:KHC:29383 AND 1 OTHER been considered in Cheekere Poovaiah's case, and there is a mistake committed by treating unalienated Jamma Bane land as government lands or government grants which is not. She submits that Cheekere Poovaiah's case is per incuriam passed in ignorancia and subsilentio arrived at a conclusion. 9.55. On the basis of the above, she submits that the above writ petitions are required to be allowed and the reliefs sought for granted.

10. Sri. Vikram Huilgol, learned Additional Advocate General submits that, 10.1. By referring to the statement of objections, and the Amended Act, he submits that the amendment was enacted with a view to confer certain rights including the assessment of Bane lands in the Coorg district.

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NC: 2024:KHC:29383 AND 1 OTHER 10.2. His submission is that by way of the amendment, certain rights have been conferred on the Kodavas, the amendment is a beneficial legislation which seeks to confer proprietary rights on landholders of Bane land in Kodagu/Coorg. By way of amendment, the persons in possession of Bane land will be registered as 'Occupants' entitling them to full ownership of the said land, bringing about uniformity in the State's land revenue system. 10.3. The State, being of the opinion that the Kodavas were deprived of their full ownership of Jamma Bane land, has sought to confer such full ownership, there are no rights which are being taken away by the State in respect of the said lands and on this basis he submits that no Kodava can be aggrieved by the rights which have been conferred under the Amended Act, and it is for this reason that in the last decade

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NC: 2024:KHC:29383 AND 1 OTHER or so only a few persons like the Petitioners have challenged the amendment, in terms of Sub-section (2o) of Section 2 of the KLR Act 10.4. Jamma tenure is originally granted towards military service or semi-military service; under the said tenure, the land was held on payment of half assessment and as a consideration for which military service was required to be rendered to the ruler as and when demanded. Such tenure was in respect of wetlands known as warg measuring 1.5 acres each in which rice was cultivated and the adjoining bane which was forest land considered necessary for grazing, leaf manure, firewood, and timber for agricultural purposes.

10.5. Bane land under the Jamma tenure was free from assessment for upto 10 acres known as 'Privileged Bane', while in respect of wet lands

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NC: 2024:KHC:29383 AND 1 OTHER adjoining the Bane, the tenure holder was to pay half of the assessment. It is in that background, due to there being no requirement to make payment of assessment, Jamma tenure was considered to be a privileged tenure.

10.6. His submission is that there was no restriction as such for alienation, many of the Kodava families had obtained decrees of partition from the then Raja and or the Courts, effected partition and thereafter proceeded to sell their individual extent of land.

10.7. By referring to the publication Religion and Society Among by the Coorg -South India by M.N. Srenivas 1952 edition, he submits that if all adult members of the lineage consented to alienation, the Patedara of the family was required to make an application

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NC: 2024:KHC:29383 AND 1 OTHER before the Revenue Authorities seeking permission to alienate the land, the seller had to pay 5% of the market value of the property as Nazarana to the State which subsequently was enhanced to 20%.

10.8. The land once transferred/alienated, the Jamma property was treated as sagu property and amenable for regular assessment. This practice having been followed, he once again reiterates that there was no prohibition for sale of Jamma Bane land. He also refers to Rules 164-167 of the CLRR and submits that the rules permitted to alienate Jamma Bane land. Rule 164 and 167 reads as under:

164. Jama, Umbli, Bhatamanya and Jaghir lands.- (1) The Assistant Commissioner may permit the alienation of jama, jama umbli, bhatamanya and jaghir lands [also sale, gift, mortgage or release of maintenance shares of such lands in a family patta other than bhatamanya lands in favour of the members of the same family] in the following circumstances, without reference to the Chief Commissioner.-

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NC: 2024:KHC:29383 AND 1 OTHER

(a) Subletting of wet land for not more than 15 years, with a proportionate part of the attached bane, if desired;

(b) Mortgage as security for loans advanced by Government under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, as amended by Coorg Act III of 1936;

(c) Mortgage as security for loans advanced by Co-operative Credit Societies for purposes for which loans might have been made under those Acts;

(d) Exchange for lands held on privileged tenure or on full assessment on condition that the transaction is to the mutual advantage of the party or parties concerned, the lands exchanged are approximately equal in value and the transfer is ratified by the performance of the ghatti ceremony. In such case, the tenure will change with the ownership;

(e) Hypothecation for not more than 15 years, of future crops. The mortgagee may be required to give security for the payment of revenue during the currency of the mortgage. (No permission is required for the hypothecation of standing crops);

(f) The permanent alienation of bhatamanya lands to a Brahmin;

(g) Sale, gift, mortgage or release of maintenance shares of jama, umbli or jaghir lands in a family patta in favour of the members of the same family, provided that all the adult male members in the family and where there are minors, the guardians, agree to the transaction. (2) If such land is leased without the permission of the Assistant Commissioner, he shall refer the case to the Chief Commissioner for orders. The Chief Commissioner may either..-

(a) Resume the land and, if he thinks fit, regrant it to the occupier on sagu tenure;

(b) Charge sagu rate for the term of the lease, in which case the privileged rate shall ordinarily be revived on termination of the lease; or

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NC: 2024:KHC:29383 AND 1 OTHER

(c) If the circumstances are unobjectionable, give sanction to the lease, the privileged rate being maintained. (3) If the Chief Commissioner resumes land and regrants it to the occupier under clause (2)(a) above, he may, before the regrant is made, recover land and timber-value under the ordinary provisions of the rules, or a proportion of such value as he thinks reasonable. (4) Lands held on waram tenure (i.e., sublet for short periods on terms of a division of crop between landholder and tenant) will not be deemed to be alienated within the meaning of Section 45 of the Coorg Land and Revenue Regulation.

167. [Privileged wet, bane or hithlu lands. (1) The alienator of privileged wet, ban thithlands shall at the Governments Nazarana, a sum equal to twenty per cent of the market value of the land alienated.] (2) Jaghir banes and hitlus may be cultivated free of assessment without limit, and without the permission of the Assistant Commissioner.

(3) On the hitlus of Yedavanad specified in the Raja's sist accounts, and not alienated by their original grantees or their representatives, cultivation of not more than 10 acres is allowed free of assessment: Provided that the land so cultivated shall be in a compact block. (4) In other respects the provisions of Rules 136 and 139 apply to privileged banes and hitlus. 10.9. His submission is that amendment was introduced taking into account the change in the societal conditions, including the factors such as breakdown of joint family system, mobility of the citizens, disbursal of members

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NC: 2024:KHC:29383 AND 1 OTHER from ancestral land, diverse economic pursuits of the members of the family, employment and or business interests outside the district of Coorg, etc. 10.10. By referring to the Cheekere Poovaiah's case, he submits that the Full Bench of this Court held that both holders of privileged and unprivileged Jamma Bane lands are not full owners but have limited rights, the land belonging to the government. Once Jamma Bane lands are alienated, the holders of such lands are entitled to all rights and are subject to liability of full ownership including full assessment of the land. He submits that the full Bench has recognized the alienation of Jamma Bane land as common place and as such, the consequences of alienation over rights and liabilities of Jamma Bane land have been categorically laid down in the said decision.

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NC: 2024:KHC:29383 AND 1 OTHER 10.11. On account of the Full Bench imposing certain restrictions on holders of Jamma Bane land, the State has now by amending Subsection (2o) of Section 2, done away with such restrictions, introduced a system of registering the holder of Jamma

Bane land as an occupant and thereby conferring full ownership on the said holder without alienation, thus by virtue of the amendment, all holders/occupants of alienated or unalienated as well as unprivileged bane lands including Jamma Bane land, are placed at par. On such registration as an occupant, even the government cannot claim any ownership in the said land and the said land would exclusively belong to the registered owner. He refers to the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Rakesh Kohli¹⁴, more particularly para nos. (2012) 3 SCC 481

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NC: 2024:KHC:29383 AND 1 OTHER 15, 16, 17, 18, and 19 thereof which are reproduced hereunder for easy reference:

15. In our opinion, the High Court was clearly in error in declaring clause (d), Article 45 of Schedule I-A of the 1899 Act which was brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonableness and irrationality.

The High Court failed to keep in mind the well- defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature.

16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. [(1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38) "43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and

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NC: 2024:KHC:29383 AND 1 OTHER two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of

the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

18. Then dealing with the decision of this Court in State of T.N. v. Ananthi Ammal [(1995) 1 SCC 519], a three-Judge Bench in McDowell and Co. [(1996) 3 SCC 709] observed in paras 43 and 44 of the Report as under: (McDowell and Co. case [(1996) 3 SCC 709], SCC p. 739) "43. ... Now, coming to the decision in Ananthi Ammal [(1995) 1 SCC 519], we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation

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NC: 2024:KHC:29383 AND 1 OTHER in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7) '7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.'

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

19. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such

enactment could not have been struck down on the ground that it was arbitrary or irrational.

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NC: 2024:KHC:29383 AND 1 OTHER 10.12. Relying on the above, he submits that a statute enacted by the Central Parliament or State legislature cannot be declared unconstitutional unless there is a flagrant violation of the provisions.

10.13. He relies on the decision of the Hon'ble Apex Court in Ashoka Kumar Thakur v. Union of India¹⁵, more particularly para 219, which is produced hereunder for easy reference:

219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground.

The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India [(1977) 3 SCC 592] said : (SCC p. 660, para 149) (2008) 6 SCC 1 : 2008 INSC 473

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NC: 2024:KHC:29383 AND 1 OTHER "149. ... if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities." Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected.

10.14. By relying on the above, he submits that a law passed by the legislature can only be challenged on constitutionally recognized and available grounds. Customs, traditions, and unreasonableness are not grounds for such a challenge.

10.15. He refers to the decision of the Hon'ble Apex Court in Binoy Viswam v. Union of India¹⁶, more particularly para 83 thereof, which is reproduced hereunder for easy reference:

83. It is, thus, clear that in exercise of power of judicial review, the Indian courts are invested with powers to strike down primary legislation enacted by Parliament or the State Legislatures. However, while undertaking this exercise of judicial review, the same is to be done at three levels. In the first stage, the Court would examine as to whether (2017) 7 SCC 59 : 2017:INSC:478

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NC: 2024:KHC:29383 AND 1 OTHER impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions (substantive judicial review) or it falls foul of the federal distribution of powers (procedural judicial review). If it is not found to be so, no further exercise is needed as challenge would fail. On the other hand, if it is found that legislature lacks competence as the subject legislated was not within the powers assigned in the List in Schedule VII, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution. However, while undertaking substantive judicial review, if it is found that the impugned provision appears to be violative of fundamental rights or other constitutional rights, the Court reaches the second stage of review. At this second phase of enquiry, the Court is supposed to undertake the exercise as to whether the impugned provision can still be saved by reading it down so as to bring it in conformity with the constitutional provisions. If that is not achievable then the enquiry enters the third stage. If the offending portion of the statute is severable, it is severed and the Court strikes down the impugned provision declaring the same as unconstitutional.

10.16. By relying on Binoy Viswam's case he submits that judicial review would require the court to first examine whether the legislation is compatible with the fundamental rights as enshrined in the Constitution or falls foul thereof. If it is not found to be so, no further exercise is to be done. The only other aspect

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NC: 2024:KHC:29383 AND 1 OTHER that could be checked is whether the legislature lacks competence on the subject matter or not. 10.17. In the present case, there is no violation of any fundamental right, nor can it be said that the State legislature lacks competence. Therefore, the challenge made is not sustainable. 10.18. He relies upon the decision of the Hon'ble Apex Court in Jaya Thakur v. Union of India¹⁷, more particularly para 66 and 74, which is reproduced hereunder for easy reference:

66. For considering the issue with regard to validity of the amendments, it will be apposite to refer to some of the judgments of this Court delineating the scope of the judicial review in examining the legislative functions of the legislature.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental

rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while 2023 INSC 606

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NC: 2024:KHC:29383 AND 1 OTHER doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

10.19. Insofar as customs and traditions are concerned, his submission is that the same cannot be a ground to challenge the statute duly enacted by a competent legislature. The legislature has the authority to modify or abolish customs by validly enacting laws. As an example, he submits that there are various customs which are not acceptable in society today, which have also been criminalized, like payment of dowry, child marriage, female infanticide, etc. He relies on the decision in N. Adithayan v. Travancore Devaswom Board¹⁸ reported in para 9 thereof which is reproduced hereunder for easy reference:

9. This Court, in Seshammal v. State of T.N. [(1972) 2 SCC 11 : (1972) 3 SCR 815] again reviewed the principles underlying the protection engrafted in Articles 25 and 26 in the context of a challenge made to 2002(8) SCC 106: 2002 INSC 425

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NC: 2024:KHC:29383 AND 1 OTHER abolition of hereditary right of Archaka, and reiterated the position as hereunder : (SCC p. 21, paras 13-14) "13. This Court in Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] has summarized the position in law as follows (pp. 531 and 532):

"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Mahant Jagannath Ramanuj Das v. State of Orissa [AIR 1954 SC 400 : 1954 SCR 1046] , Venkataramana Devaru v. State of Mysore [AIR 1963 SC 1638 : (1964) 1 SCR 561] , Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion.

The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.'

14. Bearing these principles in mind, we have to approach the controversy in the present case." 10.20. By relying on the above, he submits that no matter how longstanding or deeply rooted a customary usage may be, the same cannot prevail against a legislative enactment. A custom cannot be held out as a source of law or

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NC: 2024:KHC:29383 AND 1 OTHER law itself, contrary to the applicable law. He refers to the decision in Animal Welfare Board of India v. Union of India¹⁹, more particularly para 32, which is reproduced hereunder for easy reference:

32. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court's jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long-lasting tradition goes against the law, the law courts obviously would have to enforce the law. The learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In public interest litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paras 53 and 73 in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547: (2014) 3 SCC (Cri) 136], there is judicial determination about the practice being offensive to the provisions of the Central statute. It would be trite to repeat that provisions of a statute cannot be overridden by a traditional or cultural event. Thus, we accept the argument of the Petitioners that at the relevant point of time when the decision in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136] was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.

(2023) SCC Online 661 : 2023 INSC 548

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NC: 2024:KHC:29383 AND 1 OTHER 10.21. Relying on the above, he once again submits that a legislation cannot be invalidated on the ground that it violates customs.

10.22. He relies on the decision of the Hon'ble Apex Court in Animal Welfare Board of India cases (supra), referring to the above he submits that a statute cannot be overwritten by a traditional or cultural event, even if the same is in conflict with the statute.

10.23. By referring to entry V of List 3 of Schedule-VII he submits that the Parliament as well as the State legislature is authorized to enact laws relating to marriage, acquisition, divorce, succession, joint family, partition, etc. which were earlier governed by customs or personal laws. Entry 5 of List

3 of Schedule-VII is reproduced hereunder for easy reference:

5. Marriage and divorce; infants and minors;

adoption; wills, intestacy and succession; joint

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NC: 2024:KHC:29383 AND 1 OTHER family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

10.24. Insofar as the amendment to Section 80 of the Act of 1964 is concerned, he submits that the requirement of making payment of half the assessment was on the ground that a Kodava could be called for rendering military services at any point of time. In the present circumstances, there is no such forced conscription of Kodavas, any services rendered to the military, be it any branch is voluntary for which necessary payments are made as per the prevalent salary structure.

10.25. The amendment made to Section 80 is in furtherance of the grant of full ownership by way of amending subsection (20) of Section 2; both of them are to be read together. Once full ownership is granted under Subsection (20) of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2, full assessment has to be paid in terms of Section 80. In the event of full ownership not being sought for and the occupant continuing to be a tenure holder the restriction of tenure would continue to apply requiring half assessment to be paid. 10.26. Customs and usages as also traditions cannot be a ground for seeking exemption from payment of tax since levy of tax is a sovereign function of the State made in exercise of sovereign powers in furtherance of a validly enacted legislation. He refers to the decision in K.B. Tea Product Pvt. Ltd. and Another vs. Commercial Tax Officer, Siliguri and Others²⁰, more particularly paras 31 and 32 thereof which are reproduced hereunder for easy reference:

(2023) SCC Online 615 : 2023 INSC 530

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NC: 2024:KHC:29383 AND 1 OTHER

31. The main submission on behalf of the appellants is that as prior to 01.08.2001, the appellants were availing the benefit of sales tax exemption, the said right could not have been taken away by virtue of amendment to Section 2(17) of the Act, 1994 on the ground of legitimate expectation as well as by promissory estoppel. Thus, it is the case on behalf of the appellants that as on 01.08.2001, under the Act, 1994, when Section 2(17) of the Act, 1994 came to be amended, the appellants had a

"vested right" and therefore, the amendment to Section 2(17) of the Act, 1994 shall not affect such "vested right" of exemption from payment of sales tax, which the appellants were availing prior to 01.08.2001.

32. However, it is required to be noted that this is a case of claiming exemption from payment of sales tax. As per the settled position of law, nobody can claim the exemption as a matter of right. The exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the State. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government and it falls within the policy decision and as per the settled position of law, unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision.

10.27. Relying on the above he submits that the court has held that there can be no exemption claimed for tax.

10.28. He submits that the Jamma tenure system is a land tenure system and is not strictly a custom, usage, or tradition and therefore, would not

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NC: 2024:KHC:29383 AND 1 OTHER come within the purview of Article 29 of the constitution. The Jamma land tenure system not being in tune with the social context of today, the State has carried out the necessary amendments to include, by conferring absolute rights and powers to the land holder. No ground under Article 29 has been made out in regard to the challenge in the present case.

10.29. He refers to the decision in Mohd. Hanif Quareshi vs. State of Bihar²¹, more particularly paras 12, 13 and 15 thereof which are reproduced hereunder for easy reference:

12. Before we actually take up and deal with the alleged infraction of the petitioners' fundamental rights, it is necessary to dispose of a preliminary question raised by Pandit Thakurdas Bhargava. It will be recalled that the impugned Acts were made by the States in discharge of the obligations laid on them by Article 48 to endeavour to organise agriculture and animal husbandry and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of certain specified animals. These directive principles, it is true, are not enforceable by any court of law but nevertheless they are fundamental in the AIR 1958 SC 731

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NC: 2024:KHC:29383 AND 1 OTHER governance of the country and it is the duty of the State to give effect to them. These laws having thus been made in discharge of that fundamental obligation imposed on the State, the fundamental rights conferred on the citizens and others by chapter III of the Constitution must be regarded as subordinate to these laws. The directive principles, says learned counsel, are equally, if not more, fundamental and must prevail. We are unable to accept this argument as sound. Article 13(2) expressly says that the State shall not make any law which

takes away or abridges the rights conferred by Chapter III of our Constitution which enshrines the fundamental rights. The directive principles cannot over-ride this categorical restriction imposed; on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of chapter III will be "a mere rope of sand". As this Court has said in the State of Madras v. Smt Champakam Dorairajan [1951 SCC 351 : 1951] SCR 525, 531], "The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights".

13. Coming now to the arguments as to the violation of the petitioners' fundamental rights, it will be convenient to take up first the complaint founded on Article 25(1). That article runs as follows:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

After referring to the provisions of clause (2) which lays down certain exceptions which are not material for our present purpose this Court has, in

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NC: 2024:KHC:29383 AND 1 OTHER Ratilal Panachand Gandhi v. The State of Bombay [(1954) SCR 1055, 1062-1063] explained the meaning and scope of this article thus:

"Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people."

What then, we inquire, are the materials placed before us to substantiate the claim that the sacrifice of a cow is enjoined or sanctioned by Islam? The materials before us are extremely meagre and it is surprising that on a matter of this description the allegations in the petition should be so vague. In the Bihar Petition No. 58 of 1956 are set out the following bald allegations:

"That the petitioners further respectfully submit that the said impugned section also violates the fundamental rights of the petitioners guaranteed under Article 25 of the Constitution in-as-much as on the occasion of their Bakr Id Day, it is the religious

practice of the petitioners' community to sacrifice a cow on the said occasion. The poor members of the community usually sacrifice one cow for every 7 members whereas it would require one sheep or one goat for each member which would entail considerably more expense. As a result of the total ban imposed by the impugned section the petitioners would not even be allowed to make the said sacrifice which is a practice and custom in their religion, enjoined upon them by

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NC: 2024:KHC:29383 AND 1 OTHER the Holy Quran, and practised by all Muslims from time immemorial and recognised as such in India."

The allegations in the other petitions are similar. These are met by an equally bald denial in paragraph 21 of the affidavit in opposition. No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah CVIII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those verses or throwing any light on this problem. We, however, find it laid down in Hamilton's translation of Hedaya Book XLIII at p. 592 that it is the duty of every free Mussulman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. The very fact of an option seems to run counter to the notion of an obligatory duty. It is, however, pointed out that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats. So there may be an economic compulsion although there is no religious compulsion. It is also pointed out that from time immemorial the Indian Mussalmans have been sacrificing cows and this practice, if not enjoined, is certainly sanctioned by their religion and it amounts to their practice of religion protected by Article 25. While the petitioners claim that the sacrifice of a cow is essential, the State denies the obligatory nature of the religious practice. The fact, emphasised by the respondents, cannot be disputed, namely, that

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NC: 2024:KHC:29383 AND 1 OTHER many Mussalmans do not sacrifice a cow on the Bakr Id Day. It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows. We have, however, no material on

the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners.

15. The meaning, scope and effect of Article 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjitlal Chowdhury v. The Union of India [(1950) 1 SCR 869] and ending with the recent case of Ramakrishna Dalmia v. Union of India [CAs Nos. 455-457 and 657-658 of 1957, decided on March 28, 1958] . It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is

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NC: 2024:KHC:29383 AND 1 OTHER that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. We, therefore, proceed to examine the impugned Acts in the light of the principles thus enunciated by this Court. 10.30. By referring to the above, he submits that there is a presumption that any statute or enactment is constitutionally valid, and it would therefore be for the person who challenges the validity of legislation to establish that the same is violative of constitutional principles.

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NC: 2024:KHC:29383 AND 1 OTHER 10.31. He also refers to the decision in Noel Harper vs. Union of India²², more particularly para no. 141 which is reproduced hereunder for easy reference:

141. It was vehemently urged that there is lack of infrastructure at the designated bank and that the bank branch is manned only by 40 odd personnel.

To buttress this plea, reference is made to the observation made by Reserve Bank of India--that voluminous data on foreign remittances will put an extra financial burden on the Bank and increase its costs including divert focus on monitoring of suspicious transactions. This argument does not commend to us at all. In digital banking operations, it is not the head count dispensing physical services that would matter, but the effectiveness of the software is important. We are also not impressed by the plea that for organisations located in remote parts of the country, there would be impediments and for that reason, Section 7 violates test of fairness and reasonableness. In any case, Respondent 3 (SBI) has on affidavit explained as to the extent of measures taken for ensuring efficient servicing of FCRA accounts of all the registered associations/account-holders. Respondent 3 has also assured that if need arises, suitable corrective measures including to upgrade the facilities/services would be taken at its end. Suffice it to observe that the argument under consideration cannot be the basis to doubt the constitutional validity of the provisions in the form of Section 12(1-A) and Section 17(1), as amended vide the Amendment Act. Needless to underscore that Respondent 3 has stated on affidavit before this Court that FCRA accounts opened in its designated branch can be operated online on real- (2022) SCC Online 434

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NC: 2024:KHC:29383 AND 1 OTHER time basis without the need for physical presence of the account-holder or its officials. 10.32. By relying on the above, he submits that mere contention that the implementation of a statute would give rise to a difficulty would not be a valid ground to challenge the same. 10.33. He relies on the Affidavit of the Under Secretary to the Revenue Department, Government of Karnataka, which has been filed stating that in terms of Cheekere Poovaiah's case, the holders of unalienated Jamma Bane lands both privileged and unprivileged were not entitled to the following rights which a fully accessed alienated bane lands would be entitled to:

10.34. The right to use and occupy the land was conditional on the payment of the amount due on account of land revenue for the same;

i. Right to transfer of occupancy rights;

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NC: 2024:KHC:29383 AND 1 OTHER ii. Right to pass on occupancy rights to legal heirs.

10.35. The Under Secretary has categorically stated in the affidavit that by virtue of the impugned amendment the holders of privileged and unprivileged Jamma Bane lands are placed at par with the occupants of unalienated fully assessed lands, thereby being entitled to the aforesaid three rights and also entitled to claim all incidents of occupancy of the said lands. It is stated that a holder could apply to the Revenue Inspector and Tahsildar making an application on that behalf, the Tahsildar would forward a report to the Department of Survey to ascertain possession over the concerned property and verification of the family tree.

10.36. Sri. Vikram Huilgol, on instructions, submits that only a verification of the family tree and

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NC: 2024:KHC:29383 AND 1 OTHER possession is made and that there is no requirement for a partition deed to be executed and or that an 11E sketch be prepared as regards the area falling to the share of the applicant seeking registration of the partition deed. His submission is that if a family tree is provided along with the details of the occupants, possession entry would be made in column No.9 of the RTC. He categorically submits that there is no requirement of a partition deed to be executed nor is the State forcing any Kodava family to execute a partition deed for the purpose of registration of their name into the revenue records. His submission is placed on record.

10.37. Based on all the above, he submits that the above petitions are to be dismissed.

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NC: 2024:KHC:29383 AND 1 OTHER

11. Reply affidavit has been filed by the Petitioners reiterating some of the arguments which have been advanced and it is reiterated that the revenue Officers are seeking for partition deed and a 11-E sketch for making entries into revenue records.

12. Heard Smt. Sarojini Muthanna, learned counsel for the Petitioners and Sri. Vikram Huilgol, learned Additional Advocate General along with Smt. Saritha Kulkarni, learned HCGP for respondents. Perused papers.

13. The points that would arise for consideration are:

1. Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?
2. Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system?
3. Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of

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NC: 2024:KHC:29383 AND 1 OTHER any customary practice, usage or tradition of the Kodava race?

4. Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled?

5. Is the amendment made to Subsection (20) of Section 2 valid or not?
6. Is the amendment to Section 80 of the Karnataka Land Revenue Act valid or not?
7. What is the effect of the impugned amendment?
8. What Order?

14. I answer the above points as under

15. Answer to Point No.1: Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?

15.1. The submission of Smt. Sarojini Muthanna, the learned counsel for the Petitioners is that the impugned amendments which have been

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NC: 2024:KHC:29383 AND 1 OTHER carried out are violative of the customs, usage, and traditions of the Kodava community/race. 15.2. The submission is that the concept of partition is not recognised amongst the persons belonging to the Kodava race, if partition is effected, then, the whole concept of a joint family of Kodavas or the Kodava joint family would be destroyed. The entire land and the properties of a Kodava family are vested in the entire family. There is no distribution of the properties amongst the family members. In view of the amendment, the revenue officers are requesting and/or demanding that a partition deed be provided for the purpose of entry of names of the members of the family as also a sketch showing the entitlement of a member of the family, thus, essentially, forcing a partition in a Kodava family by metes and bounds. The submission is that since this

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NC: 2024:KHC:29383 AND 1 OTHER demand is made for Jamma Bane land, the partition deed would virtually apply to all the properties including the Jamma Bane land thereby constraining the persons belonging to the Kodava race to violate the customs and traditions of the Kodavas.

15.3. In this regard, she submitted that by reference to various sources which have been reproduced hereinabove viz., the Coorg Land Revenue Regulations, 1899 ['CLRR' for short] and authoritative books viz., Major General Rob. Cole, A Manual of Coorg Civil Law, G. Richter's Gazetteer of Coorg, Kodavas-a Pictorial by B.D. Ganapathy, Karnataka State Kodagu District Gazette' by Suryakanth Kamath, Land Systems of British India' by B.H. Baden Powell amongst others.

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NC: 2024:KHC:29383 AND 1 OTHER 15.4. That Kodavas are a patrilineal clan having a family name, which is also called the house name. The house name relates to an 'Aiyne Mane' which is the dwelling house of the family. All the members of the family reside together in the 'Aiyne Mane'. They being engaged in agricultural activities; they own lands called 'Warg land' (wet land). The 'Warg lands' are lands which are attached to a 'Bane'(dry land). The said 'Bane' is further classified as 'Jamma Bane' and 'UmbliBane. All these lands, the dwelling house belonging to the joint family is owned, possessed and enjoyed by all members of the joint family.

15.5. The property earlier stood in the name of the elder of the family known as 'Patedara' with the names of the other members of the family also entered into the revenue records, thus, evidencing right, title and interest of not only

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NC: 2024:KHC:29383 AND 1 OTHER the 'Patedara' but also of all the joint family members.

15.6. The Bane land though not initially belonging to the family, was allotted to the family by the Raja by issuing a 'Sisht' which was so issued for the services to be rendered by the Kodavas in the military campaigns of the Rajas. The Kodavas were part of the reserve army and could be called upon by the Raja to render military service as regards which the Kodavas were entitled to make use of the 'Bane land' without paying any tax as if they were the owners thereof.

15.7. With the passage of time and the advent of coffee plantation, the 'Jamma Bane' land which was to be used for grazing, manuring and certain incidental activities pertaining to agriculture where on an application was

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NC: 2024:KHC:29383 AND 1 OTHER permitted to be made use for activities other than the above viz., cultivation of coffee, once such permission was granted. The 'Jamma Bane' land was treated as alienated Jamma Bane and the land which was not so permitted continued to be unalienated 'Jamma Bane' land, which continued to be attached to the Warg land. These Jamma Bane lands whether alienated or unalienated continued to be in the possession, occupation and enjoyment of the Kodava family and as such, formed the property of the Kodava family.

15.8. In that background, it is contended that the entries having been made of all the members of the family in the revenue records, the property belonging to the entire family with each member of the family being a division holder, by way of the amendment, a partition being forced upon the family, there would be a

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NC: 2024:KHC:29383 AND 1 OTHER requirement to divide the property by metes and bounds for entry of the name of the members of the family into the revenue records since the very concept of a

division holder could be done away with, which confers rights on the entire family.

15.9. The submission of Sri. Vikram Huilgol, learned Additional Advocate General on behalf of the State is that there was no ownership of the property vested with the Kodavas insofar as Jamma Bane land is concerned whether alienated or unalienated. By way of the amendment, the Kodavas or the joint family is granted full ownership right as that of an occupant and as such, a beneficial amendment which acts in favour of the Kodavas. In terms of the amendment, there is no requirement of any partition being effected and/or a survey sketch being produced delineating the property falling

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NC: 2024:KHC:29383 AND 1 OTHER to the share of each of the family members for entry of their name in the revenue records. His further submission is that there is no mandate requiring partition of the property belonging to the Kodava race. The State has not sought to interfere with any of the customs, practices or tradition of the Kodavas. They can either continue to be joint family holders or partition as per their choice. There is no compulsion for a partition by virtue of the impugned amendment. 15.10. It is in that background of the above, I have to answer the points raised.

15.11. It is not in dispute that the Kodavas are a military race and had provided military services to the Raja for a time immemorial. It is also not in dispute that the Raja could call upon the Kodavas to render military services and during the time that such military services was not

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NC: 2024:KHC:29383 AND 1 OTHER rendered, there was no obligation on part of the Raja to make payment of any salary to the Kodavas. It is in that background that the land was granted to the Kodavas by the Raja in the form of Jamma Bane land by issuance of a Sanad permitting the Kodavas to make use of the land along with their Warg land for the purposes of grazing, manuring, etc. Thus, these lands were essentially not one which belonged to Kodavas but belonging to the Raja who by way of a Sanad granted a licence to the Kodavas to make use of the land appurtenant to their own land as regards which no tax was liable to be paid by the Kodavas. The usage of the land as also an exemption from making payment of any tax was on account of the military services required to be rendered by the Kodavas to the Raja as and when called upon. The Jamma Bane land though enured to the

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NC: 2024:KHC:29383 AND 1 OTHER benefit of the Kodava family and could be used, there is no absolute ownership confirmed on the Kodavas by such Sanad or license to make use of the land.

15.12. There can be no dispute in respect of various authoritative texts cited by Smt. Sarojini Muthanna. All those texts only indicate that the Jamma tenure or the bane land are part of the land of Kodavas. The issue in the present matter is not as regards the Jamma tenure or bane land or the

entitlement of the Kodava family to use the Jamma land appurtenant to their land. That right is well recognised and the Kodava family has been held to be entitled to make use of the Jamma land appurtenant to the Warg land. There is also no dispute as regards the payment of land revenue or concession in payment of land revenue since that is not affected by the amendment per se.

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NC: 2024:KHC:29383 AND 1 OTHER 15.13.A Full Bench of this Court in Cheekere Poovaiah's case while dealing with sub-soil rights, more particularly mines and minerals, came to a conclusion that those mines and minerals would belong to the Government and further came to a conclusion that there is no ownership right of the holder in respect of Jamma Bane land either privileged or unprivileged. An exception is however made as regards alienated bane land, in that, if the said land had been alienated under the orders of the authorities passed under Rule 136 of the CLRR, the holder of such alienated bane would become entitled to cultivate the bane land as a separate holding on payment of full assessment being entitled to full rights. In the event of the land not being alienated, then whether privileged or unprivileged, it is only a right of usage which is vested with the occupant.

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NC: 2024:KHC:29383 AND 1 OTHER 15.14.The above being the finding of the Full Bench, it is clear that all sub-soil rights as also right to trees etc., vested with the Government and the occupant had only the right for grazing, manuring, collection of firewood and/or incidental agricultural activities carried out in respect of his/their Warg lands. Insofar as alienated Jamma Bane land, the persons would be a full owner. By way of the amendment, it is seen that even as regards privileged or unprivileged Jamma Bane land, occupancy rights are recognised in terms of the amendment. As a consequence thereof, full assessment is required to be paid in respect of this Jamma Bane land, including unalienated Jamma Bane land as regards which occupancy rights have been recognised under sub-section (20) of Section 2.

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NC: 2024:KHC:29383 AND 1 OTHER 15.15.Insofar as partition or division of the property is concerned, that is a matter which lies in the sole discretion of the family members. If the family members wish to continue as a joint family for all time to come, there is no embargo on doing so. However, the Kodavas are also governed by the Mitakshara law of succession. Each member of the family would be entitled to assert his/her right in respect of the property of the family and there cannot be an embargo imposed by the State on the members of the family not to partition and/or divide the property among themselves.

15.16.The amendment as aforesaid only confers complete ownership rights of the property which is beneficial in nature. The aspect of whether the family members want to carry out a partition or not is left to the wisdom and sole discretion of the family members.

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NC: 2024:KHC:29383 AND 1 OTHER 15.17.The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that the impugned amendment which has been now effected is contrary to the customary practices of the Kodavas. Hence, on that ground she seeks for a declaration that the amendment is unconstitutional. For this purpose, she refers to Article 13 of the Constitution and contends that in terms of Clause (a) of sub-clause (3) of Article 13 of the Constitution, law would include custom or usage and therefore, no amendment could be made to a Statute contrary to the custom or usage. Article 13 of the Constitution is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights.--(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (3) In this article, unless the context otherwise requires,--

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. [(4) Nothing in this article shall apply to any amendment of this Constitution made under article

368.] 15.18.What Article 13 of the Constitution prescribes is that law cannot be inconsistent with or in derogation of the fundamental rights with reference to the law introduced prior to coming into force of the Constitution. Sub-Clause (1) of Article 13 of the Constitution deals with all the laws in force prior to coming into force of the Constitution and mandates that any such law in force in the territory of India inconsistent with the provisions of Part III of the Constitution shall to the extent of inconsistency be void. Therefore, Sub-Article (1) of Article 13 of the

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NC: 2024:KHC:29383 AND 1 OTHER Constitution would apply only in respect of laws already in force and them being inconsistent with Part III. Needless to say, sub-clause (1) of Article 13 of the Constitution would not apply to the present facts and situation. Sub-Clause (2) of Article 13 of the

Constitution mandates that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of sub-clause (2) of the Constitution shall to the extent of the contravention, be void, that is to say, that any new law brought about by the State shall not be in contravention of Part III and if there is any violation of Part-III by any law brought into force, to that extent, the new law would be void.

15.19. Sub-Clause (3) is virtually a definition clause and distinguishes between law and law enforced. Clause (a) of sub-clause (3) of Article

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NC: 2024:KHC:29383 AND 1 OTHER 13 of the Constitution indicates that law would include any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having the force of law. Clause (b) of sub-clause (3) of Article 13 of the Constitution deals with law in force and includes law passed by the Legislature or other competent authorities in the territory of India before the commencement of the Constitution not previously repealed and as such, deals with laws in force as on the date on which the Constitution came into force. Hence, Clause (b) of sub-clause (3) of Article 13 of the Constitution would also not be applicable to the present facts.

15.20. Insofar as Clause (a) of sub-clause (3) of Article 13 of the Constitution as mentioned above, it is virtually a definition clause defining what law would mean and does not indicate that a custom or usage cannot be overridden or

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NC: 2024:KHC:29383 AND 1 OTHER substituted by a law. Reading of Clause (a) of sub-clause (3) with sub-clause (1) and sub-clause (2) of Article 13 of the Constitution would only indicate that any law shall not be inconsistent with or in derogation to Part III of the Constitution. Clause (a) of sub-clause (3) of Article 13 of the Constitution does not in any manner save a custom or usage from any statutory intervention by the Parliament or the Legislature. It only mandates that no custom or usage shall be inconsistent with or in derogation of Part III of the Constitution.

15.21. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General, a law enacted by the Central Parliament or State Legislature cannot be declared unconstitutional unless it is in flagrant violation of the provision of the Constitution. For that purpose, there are several tests that have been laid down in

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NC: 2024:KHC:29383 AND 1 OTHER numerous decisions of the Hon'ble Apex Court. There is no decision that has been placed on record by the Petitioner to indicate that substitution or cancellation of a custom or usage would be a ground to challenge the constitutional validity of a legislation that is contrary to the custom or usage of a particular class of persons.

15.22. As held by the Hon'ble Apex Court in Rakesh Kohli's case (supra) and Ashok Kumar Thakur's case (supra), as to what is required for a statute to be declared as unconstitutional, and the following are to be fulfilled:

- i) It is violative of Article 14 of the Constitution;
- ii) Violative of the constitutional provision;
- iii) The appropriate legislature did not have the competence to make the law;

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NC: 2024:KHC:29383 AND 1 OTHER

- iv) That it violates in particular the fundamental rights enumerated in Part III of the Constitution.
 - v) If the statute is so arbitrary or unreasonable that it must be struck down.
 - vi) The term 'arbitrary' to be read as 'discriminatory'
 - vii) It unreasonably restricts the fundamental rights under Article 19 of the Constitution etc.,
- 15.23. As held by the Hon'ble Apex Court in Binoy Viswam's case (supra), there is a three step process required to be resorted to by a Court of Law:

- 1) Examine as to whether the impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions or it falls foul of the federal

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NC: 2024:KHC:29383 AND 1 OTHER distribution of powers? If it is not found to be so, no further exercise is needed to be done and the challenge would fail. If it is found that the Legislature lacks competence, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution.

- 2) If the impugned provision is violative of the fundamental rights or other constitutional rights;
- 3) If the first phase of enquiry is against the statute, then in the second phase, the Court would have to undertake the exercise to see if the impugned provision can be saved by reading it down so as to bring it in conformity with the provision of the Constitution, if possible to do so.
- 4) If the second stage is not possible, then in that event if the offending portion of the statute is severable, the court ought to/may strike down such a severed portion, if not, strike down the entire impugned provision as unconstitutional.

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NC: 2024:KHC:29383 AND 1 OTHER 15.24.In the present case, it is not the case of the Petitioner that the State Legislature does not have the power to amend the Karnataka Land Revenue Act. The ground of challenge as indicated above is only as to whether, by way of the amendment, the customs, traditions and usage are infringed. As referred to supra and as detailed out in the aforesaid decisions of the Hon'ble Apex Court, such a ground is not available.

15.25.The Hon'ble Apex Court in the Animal Welfare Board of India's case (supra) has categorically come to a conclusion that a provision or a statute cannot be overridden by a traditional or cultural event. In that matter, the Hon'ble Apex Court was ceased of the challenge to a ban on Jallikattu and came to a conclusion that the practice of Jallikattu was violative of the Prevention of Cruelty to Animals Act, 1960.

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NC: 2024:KHC:29383 AND 1 OTHER This case would be an illustration of a legislation overriding a tradition or a practice resorted to by the general populace 15.26.There are several such enactments which have been brought into force to get rid of social evils. Some of the prominent ones that could be referred to are the Dowry Prohibition Act, Child Marriage Act, Hindu Succession Amendment Act thereto, POCSO Act, etc. All these Legislations in some manner or the other have been brought into force by the Parliament and/or by the State legislature to prohibit or in some cases criminalise certain customs and traditions that have been followed. It is up to the legislature in its wisdom to decide on which custom, practice or tradition is acceptable, being in accordance with the requirement of the Constitution and which are in violation of the fundamental rights enshrined under the Constitution.

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NC: 2024:KHC:29383 AND 1 OTHER 15.27.If any such social, custom, practice or tradition is violative of the fundamental rights enshrined under the Constitution in terms of Clause (a) of Sub-Clause (3) of Article 13 by itself, those customs, traditions and usages would be void. However, the Parliament or the State Legislature can also bring about laws to criminalise such practices and/or prohibit such practices. Such action on part of the Centre or the State cannot be questioned only on the ground that the legislation or the Statute brings about a situation to negate a custom or tradition.

15.28.The contention that the CLRR and KLRA recognise, provide and protect the customary laws of Kodavas is again misconceived. The submission made by Ms. Sarojini Muthanna, learned counsel for the Petitioners that there is a prohibition for alienation of the Jamma Bane

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NC: 2024:KHC:29383 AND 1 OTHER land which forms part of the ancestral land on account of customs and traditions and is protected under CLRR and the subsequent KLRA is not borne out by records.

15.29.A perusal of Section 45 of the CLRR would indicate that even under the CLRR, there is a possibility of permission from the Assistant Commissioner for alienation of the lands and it is only when such permission from the Assistant Commissioner is not obtained that summary eviction in case of alienation without such permission is made can be resorted to. Thus, Section 45 of the CLRR lays down the consequences of alienation without permission of the Assistant Commissioner and does not in any manner impose any restriction or prohibition on alienation.

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NC: 2024:KHC:29383 AND 1 OTHER 15.30.Section 100 of the CLRR also speaks of transfer with the previous sanction of the prescribed authority and does not impose a prohibition on transfer but makes it only conditional upon permission being granted.

15.31.Though the CLRR is recognized by the KLRA and CLRR itself did not recognize any prohibition, the question of the KLRA recognizing any prohibition to support customary laws of the Kodavas would not arise.

15.32.Article 245 of the Constitution of India which has been pressed into service to challenge the constitutional validity of the amendment would also not in my considered opinion apply since the same provides only for powers of the Parliament to make laws for the whole or any part of the territory of India and the legislature of a State to make laws for whole or any part of

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NC: 2024:KHC:29383 AND 1 OTHER the State. The State Legislature having made the impugned laws which have an effect within the State of Karnataka cannot be said to fall foul of Article 245 of the Constitution. 15.33.The decision in Kerala Education Bill, 1957 was one rendered in a situation relating to equality under Article 14 of the Constitution and are relatable to Article 29 and 30 of the Constitution which relates to cultural and educational rights.

15.34.Though the Kodavas could be considered to be a minority not only in the State of Karnataka but across the country, the said provisions could be attracted only if there was any violation of the fundamental rights of the Kodavas made on account of the amendment. Except to contend that there is a violation of the customary laws, there is no other further

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NC: 2024:KHC:29383 AND 1 OTHER ground made out as regards violation of Article 28, 29 and 30 of the Constitution to make them applicable to hold the amendment to be in violation of the Constitution.

15.35.The decision in Sardar Syedna's case also in my considered opinion would not be applicable for the reason that, the decision was relating to a practice to propagate a religion and its religious practices wherein the Head of the Muslim Bohra community was conferred certain rights and powers to excommunicate persons of the community who did not adhere to their directions. This was held to be an essential practice in order to maintain the discipline of the Muslim Bohra community and in that background the practice was upheld by the Hon'ble Apex Court. There is no such question involved in the present matter. Non-alienation of land vested with the family is not one which

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NC: 2024:KHC:29383 AND 1 OTHER is required for the purposes of propagating the Kodava race and neither are the Kodavas recognised as a separate religion in contrast to Hinduism, further, they are also governed by the Mitakshara School of Hindu Law. As observed supra, the various treatises and authoritative texts which have been referred to by Ms. Sarojini Muthanna, learned counsel for the Petitioners themselves envisage the possibility of alienation albeit with prior permission/sanction.

15.36.The reference to Article 51A(f) of the Constitution to contend that there is a duty cast on the State to preserve the rich heritage and composite culture cannot be disputed. Preservation of rich heritage and composite culture would require that such a practice has been recognised and continues to be in force even as of today. In this case, the practice

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NC: 2024:KHC:29383 AND 1 OTHER relates to the non-alienation of a joint family property. As referred to Supra, at the cost of reputation, it is once again reiterated that there was never any prohibition for alienation so long as prior sanction is obtained and this being in the nature of a condition attached to a land tenure cannot be contended to be an essential customary, custom or practice of the Kodava race. Thus, Article 51A(f) of the Constitution also would not be applicable to the present case.

15.37.The submission of Smt. Sarojini Muthanna, learned counsel for the Petitioners, is that the customary law is recognised under the CLRR and as such, the partition of the property and subsequent alienation, if any, made by the person to whom the said portion of the property falls to the share would be violative of Section

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NC: 2024:KHC:29383 AND 1 OTHER 45 of the CLRR, since the property is required to be enjoyed by all members of the family, cannot also be countenanced inasmuch as by the recognition of full occupancy rights in terms of sub-section (20) of Section 2, the entire family would become the owner of the property. The ownership is still not vested with individual members of the family in terms of the amendment.

15.38.Insofar as the further contention of Smt. Sarojini Muthanna that without entry of the name of each of the family members, no loan could be obtained since no guarantees could be issued by the family members is again misconstrued. As afore observed, the property continuing to be in the name of the family, the names of the members of the family would also be added to the revenue records. Their name being present in the revenue records, would

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NC: 2024:KHC:29383 AND 1 OTHER always enable them to apply for and obtain necessary loans from the concerned banks. 15.39.Insofar as there being a prohibition for sale of the property outside the patrilineal clan, the pre-emption rights which are available under Section 4 of the Partition Act, 1893 could be exercised by the members of the patrilineal clan.

15.40.Her submission that until now taxes were exempted on the property and by way of the impugned amendment, taxes are required to be paid cannot be a ground to challenge such statutory amendment. A fiscal aspect of any of act or otherwise cannot be a ground for challenge. Even otherwise, the exemption from making payment of tax which was granted to the Kodavas on account of the military service expected to be rendered by them to the then

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NC: 2024:KHC:29383 AND 1 OTHER Raja and subsequently to the British, there is no such compulsion today for the Kodavas to render military service. Such service today is voluntary and not a forced service as was under

the Raja.

15.41.It would, however, be required for me to recognise and take cognisance of the glorious service rendered by members of the Kodava race to the armed forces. I would also have to commend the members of the Kodava race for having voluntarily rendered such glorious service and protecting the motherland. That does not, however, mean that members of the Kodava race would be forced to serve in the military, in today's time and age, under the Constitution of India, there is no concept of forced conscription recognised in India.

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NC: 2024:KHC:29383 AND 1 OTHER 15.42.The invocation made of Article 13 of the Constitution of India to contend that there is a violation of customary rights, since customs or usage are deemed to be law under Clause (3)(a) of Article 13 of the Constitution of India would also not enure to the benefit of the Petitioners since the reference to Clause (3)(a) of Article 13 of Constitution of India relates to Clause (1) of Article 13 of Constitution of India which speaks of all laws in force in the territory of India and mandates that any law in force which is inconsistent with the Provisions of Part- III shall to that extent of inconsistency be void. Thus, in terms of Clause (1) of Article 13 of the

Constitution of India, any law inconsistent, including customary law or usage would be rendered void. Clause 3(a) would not amount to a restriction or embargo on the State to enact any law contrary to the customs and usage.

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NC: 2024:KHC:29383 AND 1 OTHER 15.43.The decision in Jagdev Singh Sidhanti's case was in relation to elections and malpractice where the candidate had extorted for votes to be granted to him in order to protect a particular language. The same would also have no bearing in the present facts and circumstances.

15.44.A perusal of Rule 164 of the CLRR would make it clear that there is in fact no prohibition for alienation of the Jamma land. The only requirement was that the person seeking for sale was required to approach the Assistant Commissioner. The Assistant Commissioner could grant permission for sale, gift, mortgage or release as contained therein. Thus, it is clear that even under CLRR, there is a possibility of alienation recognised and therefore it cannot be now contended that the customs and traditions

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NC: 2024:KHC:29383 AND 1 OTHER prohibit the alienation of the property belonging to the joint family.

15.45.The decision in C.A. Nanjappa's case is relied upon to contend that in terms of section 145 of the CLRR, the prohibition for partition is not one which can be a ground for challenge of the amendment to sub-section (20) of Section 2 as also the amendment to Section 8o. By virtue of the amendment to sub-section (20) of Section 2, full occupancy rights/full ownership is granted. By virtue of amendment to Section 8o, the assessment/tax is collected. Neither of these two amendments would explicitly or implicitly permit partition. The aspect of partition, if sought for by any member of the family, the same could be contested on the basis of Section 145 of the CLRR or any other grounds which may be available to the parties.

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NC: 2024:KHC:29383 AND 1 OTHER The said ground which has been contended to be the natural consequences of the amendment being made, cannot be accepted, more so, in view of the submission made by the learned Additional Advocate General, and in view of the affidavit filed by the Under Secretary, Revenue Department that there would be no requirement for producing a partition deed or a survey sketch/11-E sketch for the purpose of entry of a member of a family in Column No.9 of the RTC. Thus, without any partition being effected, the names of any family member which has been missed out or which is required to be added on account of birth etc, and any name of a member required to be deleted on account of death etc, can be so done without a partition being effected. Thus, I am of the considered opinion that the impugned amendments do not in any manner offend Section 195 of the CLRR

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NC: 2024:KHC:29383 AND 1 OTHER and there is no mandatory requirement for partition to be effected amongst the Kodava family, post the impugned amendment. 15.46.Insofar as customs and traditions are concerned, the submission made by the learned Additional Advocate General that even during times of the Raja and/or the British rule, a partition could be effected as also properties sold to a third party is sought to be substantiated by reference to a Book 'Religion and Society Among by the Coorg -South India by M.N. Sreenivas' wherein it is stated that the seller could pay 5% of the market value of the property as Nazarana to the State, for such sale, which was subsequently enhanced to 20%. In this regard, even Rule 164 of the CLRR empowered the Assistant Commissioner to permit the alienation of the

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NC: 2024:KHC:29383 AND 1 OTHER jamma, jamma umbli, bhatamanya and jahghir lands by way of sale, gift, mortgage or release of maintenance shares etc. Thus, in my considered opinion, it cannot now be contended that there was always an embargo for a member of a Kodava family to alienate his property to a third party and/or for partition to be effected amongst the members of the Kodava family. Thus, in my opinion, there is no custom, usage or tradition, which can be said to be in existence prohibiting the alienation or partition of the property of a Kodava family. 15.47.The decision of the Hon'ble Apex Court in Adithayan's case and Animal Welfare Board of India's case would in clear and categorically terms establish that it is a legislative enactment which is required to be given effect to, even if, there are customary practices which have been prevalent and accepted for a long period of

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NC: 2024:KHC:29383 AND 1 OTHER time. It is the legislature which is supreme and by way of the legislative enactment where a particular custom is overridden, prohibited or regulated, the same would not be a ground for challenge unless the same is without legislative competence or is violative of the fundamental rights guaranteed under Part-III of the Constitution.

15.48.In the present case, there being no doubt as regards the competence of the legislature, more so, when in terms of Entry 5 of List 3 of Schedule-VII, it is the State which can enact laws relating to marriage, divorce, succession, joint family partition, land laws etc. 15.49.The origin of Jamma Bane land being on account of issuance of a Sanad by the Raja allotting or making available certain land for the use of a member of the Kodava race or a

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NC: 2024:KHC:29383 AND 1 OTHER Kodava family. The land granted by the Raja being the wet land-warg land, there is only a right granted to such Kodava family or a person belonging to the Kodava race to make use of the appurtenant land for the purpose of grazing, manuring and any other agricultural activities. This land being called Jamma Bane land went with the Warg land and

formed a kind of land tenure inasmuch as on account of the right to use this land, the member of Kodava race and/or Kodava family was required to render military service when called upon, and in respect of this land, either tax was not required to be paid or a concession in tax was made available. Subsequently, the Jamma Bane land was classified as privileged and unprivileged. The privileged land being capable of being used for the purpose of growing coffee, which arose with the advent of coffee plantation in the

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NC: 2024:KHC:29383 AND 1 OTHER country, and more particularly in that region. The aspect of privileged and unprivileged land came about on account of changed circumstances and as a modification of the land tenure of Jamma Bane. Subsequently, some of the lands were permitted to be alienated as regards which full assessment was required to be paid and the lands which were not alienated continued to be unalienated entitled to concession in assessment. This classification of alienated land is also a further modification of the land tenure. The Kodava family having established a Kaimada or a temple for ancestors is not a part of the land tenure, nor is demarcation of Thutengalas part of the land tenure. This is only a manner of utilisation of the bane land for such purposes which are non- agricultural in nature, since those lands were not fit for agricultural use, mainly for the reason

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NC: 2024:KHC:29383 AND 1 OTHER that during those times, use of lands for agriculture would only be from wet lands and not dry lands.

15.50. Thus, I answer Point No.1 by holding that neither a Statute nor an amendment to the Statute can be questioned on the basis of the Statute or amendment thereto being violative of customs, usage or traditions. Any challenge to a statute or amendment to a statue can only be made on the basis of the available grounds as indicated above, and as laid down by the Hon'ble Apex Court in several decisions.

16. Answer to Point No.2: Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system? 16.1. Ms. Sarojini Muthanna, learned counsel for the Petitioners has sought to contend that the Jamma Bane lands are incapable of alienation,

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NC: 2024:KHC:29383 AND 1 OTHER there is a prohibition on alienation. If the said land is permitted to be alienated, the entire edifice of the family system of Kodavas would be destroyed. This aspect and contention would have to be examined from the law and documents on record; this has also, to some extent, been considered by me in answer to Point no.1.

16.2. A perusal of the Karnataka State Kodagu District Gazette by Suryakanth Kamath relied upon by the Petitioner would indicate that there was a recommendation made not to permit the Coorgis to sell their property, since that may result in impoverished Coorgis to dispose off the land to Europeans or natives of Mysore from whom a service of the like rendered by Coorgis could not be expected. That is to say that the permission was not denied on the basis of any customary practice but only on the ground of

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NC: 2024:KHC:29383 AND 1 OTHER keeping the Kodavas sub-servient and render military services which they were rendering to the British by granting an exemption of payment of taxes. The lands as could be seen were classified as Sagu land and Jamma land, which classification is made for the purpose of land tenure and imposition of land revenue. 16.3. As could be seen from the reference made by the learned counsel for the Petitioner herself relating to the publication by B.H. Baden Powell in 'Land Systems of British India'. The reference made to Jamma land is as Jamma tenure and reference made to Sagu is as regards Sagu tenure. The Jamma Bane land was not held to belong to the tenure holder but belonged to the Government. The bane land being appurtenant to the Jamma land or the Sagu land were used for incidental purposes. Subsequently, with the introduction of coffee,

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NC: 2024:KHC:29383 AND 1 OTHER when the land was sought to be cleared for growing coffee i.e., when the lands were being disposed to coffee planters and it is in that background, that certain Rules were introduced permitting the Jamma Bane land to be used for coffee cultivation provided no large trees were removed.

16.4. Section 189 of Rob Cole's Manual deals with what constitutes a division and prescribes that a member is not to be considered as divided on the simple execution of a deed but he must have taken a share and lived apart. 16.5. Thus, even as per Rob Cole's manual, a division of family is permitted. In terms of Section 192 of Rob Cole's Manual, if a division has taken place, ceremonies are performed by the divided member in his own residence. This again indicates that division was permissible.

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NC: 2024:KHC:29383 AND 1 OTHER 16.6. From the above, it is seen that the classification of the land is on the basis of the land tenure system and not on the basis of customs or usage of Kodavas as sought to be contended by Ms. Sarojini Muthanna, learned counsel for the Petitioners.

16.7. In that view of the matter, the concomitance of the land tenure system would equally apply to Jamma Bane land and not only the customs and traditions.

16.8. Thus, I answer Point No.2 by holding that non-

alienation of the Jamma Bane land and the said land going along with the Jamma land is a concomitance of the land revenue system and not based on customary practice.

17. Answer to Point No.3: Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of any

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NC: 2024:KHC:29383 AND 1 OTHER customary practice, usage or tradition of the Kodava race?

above, having come to a conclusion that there is no such essential customary practice requiring that alienation of a joint family property is prohibited and having come to a conclusion that the permission which is required to be obtained under the earlier CLRR and now the KLRR by a member of a Kodava family to alienate a property is a condition of land tenure, I am of the considered opinion that by way of the amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, there is no violation of any customary practice, usage or tradition of the Kodava race. 17.2. The decision in Kerala Education Bill, 1957 was one relating to minorities and the definition thereof in terms of Article 25, 26, 29 and 30 of

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NC: 2024:KHC:29383 AND 1 OTHER the Constitution of India with reference to educational institutions and the fees collected therein. The said decision would not in my considered opinion be applicable to the present case. The customs and traditions which were considered in the Kerala Education Bill matter was for the purpose of determination of who is a minority and not otherwise.

17.3. The decision in Virendra Nath Gupta's case also dealt with a linguistic minority institution on the basis of the Article 29 and 30 of the Constitution of India. The same would also have no bearing in the present matter for the same reason mentioned above.

17.4. The concept of privileged and unprivileged tenure is also explained hereinabove. Privileged is when no assessment is required to be paid and unprivileged is one where assessment is

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NC: 2024:KHC:29383 AND 1 OTHER required to be paid for usage by the Kodavas. By way of the amendment, the distinction between privileged and unprivileged has also been removed. The Jamma land which had been alienated earlier continues to be under the ownership of the respective purchaser who if a Kodava or not, would have obtained necessary rights of ownership.

17.5. By way of the amendment, even the unalienated land would now vest in the family as full ownership. Thus, I am of the considered opinion that this is a benefit which is provided to the members of the Kodava race and by virtue of amendment to sub-section (20) of Section 2, full ownership right as an 'Occupant' is granted to the members of the Kodava race and/or the family

owning the Jamma Bane land, privileged or unprivileged. The amendment to sub-section (20) of Section 2 being a beneficial

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NC: 2024:KHC:29383 AND 1 OTHER amendment conferring full ownership rights cannot be said to be in violation of the customs, traditions and/or practices.

17.6. The customs and practices that Smt. Sarojini Muthanna, learned counsel for the Petitioners has contended is as regards to common usage of the land belonging to the family, common ownership of the said land and there being an embargo on partitions being effected among the family members.

17.7. The amendment per se does not in any manner deviate from the above rights. The amendment does not require members of a Kodava family to execute a partition deed and/or produce a survey sketch alienating the partition among the family members. Insofar as this contention is concerned, an affidavit has been filed by the Under Secretary to the Revenue Department

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NC: 2024:KHC:29383 AND 1 OTHER stating that there would be no requirement to produce a partition deed or a survey sketch/11- E sketch for entry of the name of a family member in the revenue records so long as the family tree and/or documents evidencing that the person is belonging to that family is produced, the name of such person would be entered in the revenue records. This would answer the apprehension on part of the Petitioners inasmuch as the Under Secretary, Revenue Department, has categorically stated on oath that no partition deed is required nor is a survey sketch/11-E sketch required to be produced.

17.8. It is only on the basis of requirement to produce the same that it has been contended that the customs, traditions and practices of the Kodavas are violated by the amendment. If there is no requirement to produce partition

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NC: 2024:KHC:29383 AND 1 OTHER deed and/or survey sketch/11-E sketch, the question of any customs or traditions being violated would not arise.

17.9. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General and as per the affidavit of the Under Secretary, Revenue Department, there being no requirement of a partition to be effected and/or survey sketch or a 11-E Sketch being required to be furnished by way of the amendment, the property continues to be that of the joint family , and there would be no division of the property by virtue of the amendment simplicitor. The choice of continuing to be part of the joint family and for the property to be continued as a joint family property is that of the joint family members. The amendment per se does not require any such partition. Thus, there would be no

violation of customary law or Section 45 of

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NC: 2024:KHC:29383 AND 1 OTHER CLRR which is also now part of the Land Revenue Act.

17.10. Insofar as the submission that in the joint family properties, there are Kaimadas [temple for ancestors] and Thutengalas [family graveyard] which are to be enjoyed by all the members of the family. Firstly, as afore observed, there would be no partition by way of the amendment. Secondly, even if the members of the family wish to partition, suitable arrangements could be made insofar as Kaimada and Thutengala are concerned. That being a private arrangement between the private parties, the amendment cannot be questioned in that regard. The amendment does not force anyone to partition the properties, more so the Kaimada or the Thutengala. In the event of a partition suit being filed all contentions as are available can be raised.

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NC: 2024:KHC:29383 AND 1 OTHER 17.11. The exemption granted from making payment of taxes being primarily on the requirement of persons of the Kodava race to render military service to the Raja whenever called upon and now there being no such requirement, the claim for non-payment of tax would not survive, nor can it be countenanced in fact or law. By virtue of the amendment under sub-section (20) of Section 2, full ownership of the property is granted to the family, whereas under the Raja and/or the British, it was only a tenure in terms of the 'Jamma' tenure of bane lands which had been granted.

17.12. Now with full ownership of the land, an obligation for making full payment of taxes on the said land now fully owned by the family. This obligation cannot, in my considered opinion, be sought to be negated by relying on

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NC: 2024:KHC:29383 AND 1 OTHER the historical aspect of forced military service by members of the Kodava race.

17.13. The distinction sought to be made out by her in respect of privileged and unprivileged tenure would also no longer survive for consideration in view of the full ownership of land being granted by way of the amendment to sub- section (20) of Section 2.

17.14. The aspect of privileged or unprivileged tenure would have been necessary for consideration so long as the land was under a tenure and not under the full ownership. The tenure land could be alienated or unalienated. Alienated land could be used for growing coffee and unalienated land would continue to be used for activities incidental to agriculture. 17.15. Even though the alienated Jamma land less than 10 acres was free from assessment and

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NC: 2024:KHC:29383 AND 1 OTHER only land in excess of 10 acres would be assessed and tax payable, I am of the considered opinion that even the alienated Jamma land which continued to be owned by the Government and not by the family and now the land being owned by the family, such distinction of alienated or unalienated, privileged or unprivileged lands would not enure to the benefit of the Petitioners. 17.16.Insofar as the submission that partition would be a resultant of the rights conferred on individual members of the family which would lead to the breaking down of the Kodava family system and their customs or commercialization which would have an impact on the environmentally sensitive region, I am of the considered opinion that the use of the land would be regulated by the appropriate statute applicable thereto and any 'permission',

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NC: 2024:KHC:29383 AND 1 OTHER 'sanctions' or 'no objection' which are required for the utilisation of the land for commercial purposes, which may have an impact on the environment, would have to be adhered to and complied with by any and all members of the family.

17.17.The decision in Zoroastrian Cooperative Housing Societies' case is invoked to contend that a restriction amongst the Kodava race by custom, in respect of alienation of the property except within the patrilineal clan would be valid and that the same is taken away by amendment to sub-section (20) of Section 2 would also not be sustainable. Inasmuch as the said decision was rendered in the background of the fact that all the qualifications of a person to become a member of the society, the bye-laws mandating that it is only a member of Zoroastrian faith who could become the

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NC: 2024:KHC:29383 AND 1 OTHER member of the cooperative society and further impose restriction on alienation of the property to a person otherwise than belonging to the Zoroastrian faith. In that decision, persons had become members of the society voluntarily, accepted the terms and conditions and bye-laws of the society and therefore, the Hon'ble Apex Court came to a conclusion that all members are bound by the bye-laws of the society. 17.18.In the present case, though there may be a custom or a usage among the Kodava race not to partition the property, the same is a personal property right of the members of the Kodava race who may choose to partition or not, the joint family properties. The decision in Zoroastrian Cooperative Housing Societies' case would therefore not be applicable to the present facts and circumstances.

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NC: 2024:KHC:29383 AND 1 OTHER 17.19.The reference to DAV College Jalandhar's case for ascertaining linguistic minorities would also be of no assistance or relevance in the present matter. The amendment to sub-section (20) of Section 2 is not one based on linguistic minority, but as regards the nature of the Jamma Bane Land in Coorg, to either be owned by persons of the Kodava race or by persons belonging to any other community. 17.20.The impugned amendment is not made

with reference to a person belonging to the Kodava race or otherwise and as such, whether the members of the Kodava race would constitute a separate linguistic minority or not would not be relevant for the purpose of consideration in this matter.

17.21.Article 51(A) of Part-IV is reproduced hereunder for easy reference:-

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NC: 2024:KHC:29383 AND 1 OTHER 51A. Fundamental duties.--It shall be the duty of every citizen of India--

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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NC: 2024:KHC:29383 AND 1 OTHER 17.22.The reference to Article 51(A) of the Constitution of India being a duty cast on the State to preserve the heritage of our composite culture and the

invocation thereof to contend that the family traditions of the Kodava race, which is the culture of the Kodavas, in order to maintain their heritage, would also have no bearing in the present matter, since by way of the amendment, there is no violation of any culture or heritage. By way of the amendment, only the ownership rights are provided to the family.

17.23. It is for the members of the family to protect and preserve the rich heritage and culture of the family and the Kodava race. Merely by way of the impugned amendment, it cannot be stated that the State has violated its duty to preserve the rich heritage of the composite culture of the Kodava race.

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NC: 2024:KHC:29383 AND 1 OTHER 17.24. A submission is made that Jamma Bane lands are not government lands. It never belonged to the Raja or the British and the British did not hand it over to the Republic of India and as such, it is contended that the land would continue to be a private property and on that basis it is contended by relying upon Article 294

(b) of the Constitution of India that there is a duty cast upon the State to preserve these private properties with regards to the customs and traditions followed. Article 294 (b) of the Constitution of India only speaks of the rights, liabilities and obligations of the Government of the domain of India and the Government of each Governors' Province to be that of the Government of India and the Government of each corresponding States.

17.25. There is no such obligation contractual or otherwise, requiring the State to continue the

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NC: 2024:KHC:29383 AND 1 OTHER tenure of the land as Jamma Bane land so as to invoke Article 294 (b) of the Constitution of India. Similarly, Section 6 of the Karnataka General Clauses Act, 1989, which deals with repeal of any enactment, would also not be applicable since there is no repeal which has occurred. It is an amendment made in order to provide full right, title and interest in the property to members of the Kodava joint family.

17.26. The decision in Sardar Syedna Taher Saifuddin Saheb's case was one rendered in a situation where excommunication was permitted both as a punishment as also for preservation of religious denomination and it is in that background that it is held that the same is protected under Article 25 and 26 of the Constitution of India and the same cannot be questioned. That was a challenge made

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NC: 2024:KHC:29383 AND 1 OTHER specifically as regards power to excommunicate for self-preservation of religious denomination. In the present case, it cannot be said that the amendment to sub-section (20) of Section 2 would not preserve any religious denomination and/or bring about a division in the denomination which are already adverted to above. Hence, the decision in Sardar Syedna Taher Saifuddin Saheb's case would also not be applicable to the present facts.

17.27.In view of the above discussion, it is clear that by way of the amendment what is achieved is, to grant full ownership of the land to the Kodava family including all division holders i.e., all members of the family in a land which earlier had stood vested in the Government and the Government was the owner thereof. This conferment of full ownership in my considered opinion cannot be said to be in violation of any

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NC: 2024:KHC:29383 AND 1 OTHER custom, tradition or usage of the Kodava community.

17.28.As such, I answer point No.3 by holding that by way of the impugned amendment to subsection (20) of Section 2 and amendment to Section 8o of KLRA, 1964, there is no violation of any customary practice, usage or tradition of the Kodava race.

18. Answer to Point No.4: Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled? 18.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners in regard to this aspect is that a law cannot override any custom, usage or tradition. The answer to this has already been provided by Hon'ble Apex Court Adithayan's case and Animal Welfare Board of India's case, which would clearly and

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NC: 2024:KHC:29383 AND 1 OTHER categorically indicate that it is the Legislative enactment, which would have to be given effect to and that the same would override any customary practice, which had been prevalent and accepted for a long period of time. It is the Legislature, which is supreme and by way of legislative enactment any particular custom can be overridden, prohibited or regulated. Such overriding of a custom will not be a ground to challenge the legislation.

18.2. The grounds of challenge of a legislation have been detailed hereinabove and laid down by the Hon'ble Apex Court in many cases. An alleged isolation of custom is not a valid ground for such a challenge..

18.3. The above is also countenanced by several other enactments which have been enacted to get over certain social ills like dowry, child

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NC: 2024:KHC:29383 AND 1 OTHER marriage, etc. Though these were customs and traditions followed by different communities, by introduction of the Dowry Prohibition Act as also by introducing Section 498A into the erstwhile Indian Penal Code and now Sections 85 & 86 of the Bharatiya Nyaya Sanhita (for short, 'BNS'), the demand for dowry not only has been prohibited but has also been made a criminal offence.

18.4. Section 494 of the erstwhile IPC and now Section 82 of the BNS, criminalises bigamy. Bigamy also was a custom practiced by many. 18.5. By introducing the Prohibition of Child Marriage Act, 2006, marriage of a child/minor has been prohibited and criminalised.

18.6. Prior to the introduction of said enactment, child marriage was very much in vogue. Thus, all these enactments have been brought about

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NC: 2024:KHC:29383 AND 1 OTHER to bring about a social change, to overcome the social ills and to ostracize and/or criminalise certain practices which are contrary to the rights guaranteed under Part III of the Constitution of India.

18.7. These enactments though have done away with certain customs, usage or traditions by overriding, prohibiting or cancelling them have been held to be valid.

18.8. I answer Point No.4 by holding that by way of introducing a new enactment or by way of amendment to an already existing enactment, certain customs, usage or traditions as prevalent then, can be overridden, prohibited or cancelled by such a new enactment or amendment to an existing enactment.

19. Answer to Point No.5: Is the amendment made to Subsection (20) of Section 2 valid or not?

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NC: 2024:KHC:29383 AND 1 OTHER 19.1. Certain arguments have been advanced contending that this Court in Cheekere Poovaiah's case has not considered the customary rights and religious practices of the Kodavas and as such, the said judgment is not correct. The judgement in Cheekere Poovaiah's case having been rendered by the Full Bench of this Court, the said judgment would be binding not only on this Bench but also on the Petitioners. The said judgement having attained finality and no challenge having been made thereto.

19.2. Though in Cheekere Poovaiah's case, mineral rights and sub-soil rights were considered, the basic consideration of the matter was on account of the privileged and unprivileged Jamma Bane land as also the alienated and unalienated Jamma Bane land. The aspect of sub-soil rights and mineral rights was

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NC: 2024:KHC:29383 AND 1 OTHER considered in respect to payment of royalty to the Government. The rights of the Government as regards privileged and unprivileged Jamma Bane land as also alienated and unalienated Jamma Bane lands having been held to be vested with the State and the said properties having been held to be government land, it cannot now be contended by the Petitioners that the said judgment would only apply insofar as mineral rights or subsoil

rights. 19.3. In my considered opinion the said judgment would apply to all Jamma Bane lands as classified above. Be that as it may, as submitted by the learned Additional Advocate General, it is in order to provide full rights in the property which in Cheekere Poovaiah's case was held to be not available to the holder of Jamma Bane land, that the present amendment has been brought about. Thus,

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NC: 2024:KHC:29383 AND 1 OTHER even on this ground, the entire family becoming the owner of the land, the question of any of the rights of the member of a Kodava family being impinged upon does not arise. 19.4. As observed above, in answer to the earlier questions, as also in answer to the present question, by way of amendment of sub-section (20) of Section 2, what is sought to be achieved is grant of full ownership of land to the family and the members of the family. In effect, by way of amendment of sub-section (20) of Section 2, ownership rights are conferred on the occupant. This conferment of ownership rights is over and above the existing rights. It does not in any manner take away any right vested in the individual or the family. There is no disadvantage that the said amendment puts upon the family or any individual member of the family. The amendment to sub-section (20)

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NC: 2024:KHC:29383 AND 1 OTHER of Section 2 does not in any manner violate or impinge upon the rights guaranteed under Chapter 3 of the Constitution. In fact, by way of such amendment, full ownership rights have been granted.

19.5. There is equality brought about between the Kodavas and other occupants of the land inasmuch as the Kodavas could not have filed an application for regularization or grant of occupancy rights as regards Jamma Bane land prior to the impugned amendment. Whereas persons residing in other parts of the State could make application for grant of occupancy rights as regards the land which they were in occupation of in an authorized or unauthorized manner.

19.6. Thus, I answer Point No.5 by holding that the amendment of sub-section (20) of Section 2 is

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NC: 2024:KHC:29383 AND 1 OTHER not violative of any law. Therefore, it has to be held to be valid and in accordance with law.

20. Answer to Point No.6: Is the amendment to Section 8o of the Karnataka Land Revenue Act valid or not?

20.1. The contention Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the amendment to Section 8o, the Kodavas would now have to make payment of taxes/land revenue/land assessment as regards the Jamma Bane land which they were not paying earlier on

account of the tenure of the said land having recognized as a custom and as such, requiring the payment of taxes would be to the detriment of the Kodavas.

20.2. The amendment to Section 80 of the KLRA is in furtherance of the amendment made to sub-section (20) of Section 2 of the KLRA. By way of amendment to sub-section (20) of Section 2,

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NC: 2024:KHC:29383 AND 1 OTHER full ownership rights have been provided for. It is only prior to the grant of full ownership that the land was not fully assessed to tax. That is to say, by recognizing a concomitant of the land tenure, whereunder the land owner namely a Kodava was required to make payment of half the assessment in view of the military services required to be offered to the king. The condition of recognition of the land tenure and the condition for being eligible for reduced assessment was the requirement of the Kodava to provide military services to the King. As regards the land over which full ownership was not granted by the King to the Kodava or his family.

20.3. By way of amendment to sub-section (20) of Section 2 of the KLRA, firstly, full ownership rights have been granted to a Kodava family as regards the land owned by them and they

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NC: 2024:KHC:29383 AND 1 OTHER would be entitled to the usage of the said land as a full owner.

20.4. Secondly, the earlier condition for rendering military services is no longer in existence, since now, the recruitment made to any of the armed forces is on the basis of examination and selection process and not merely on the basis of holding the land as a Jamma Bane.

20.5. The decision relied upon in this regard in the Kunthat Thatehunni Moopil Nair's case would also not enure to the benefit of the Petitioners. It was a case where the tax imposed was held to be violative of Article 19(1)(F) of the Constitution of India since the quantum of tax imposed was many times over the income from the forest land. That case was a challenge as regards the quantum and imposition of unreasonable restriction, which

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NC: 2024:KHC:29383 AND 1 OTHER could amount to being confiscatory in the event of default in making payment of taxes. That would not be the case here. The assessment of the land being on an agricultural basis, it is not the contention of any of the Petitioners that the said assessment is more than the income that could be earned.

20.6. By relying on Threesiamma Jacob's case, it is contended that the Hon'ble Apex Court has held that there is nothing in law which declares that all mineral wealth sub-soil rights vest in the State and further, ownership of sub-soil/mineral wealth should normally follow the ownership of the

land, unless the owner of the land is deprived of the same by some valid process. Relying on the same, it is submitted that Threesiamma Jacob's case impliedly overruled Cheekere Poovaiah's case insofar as the mineral rights are concerned. Even if

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NC: 2024:KHC:29383 AND 1 OTHER that may be, without expressing any opinion on the same, even if Cheekere Poovaiah's judgement were said to be overruled, the same would not enure to the benefit of the Petitioners insofar as the challenge to the amendment to sub-section (20) of Section 2 and amendment to Section 80 are concerned, since neither of these two amendments relate to any mineral or subsoil rights.

20.7. Even if the judgement in Threesiamma Jacob's case can be said to have overruled the observations made by the Full Bench of this Court in Cheekere Poovaiah's case as regards to subsoil and mineral rights, the basis of Cheekere Poovaiah's case is not taken away inasmuch as the finding in Cheekere Poovaiah's case that Jamma Bane land is government land and not individual personal property. That finding continues to hold the

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NC: 2024:KHC:29383 AND 1 OTHER field and has not been distinguished or overruled in Threesiamma Jacob's case. 20.8. By relying upon the decision in Rakesh Kohli's case, the learned Additional Advocate General has contended that it is only if a statute or amendment has been enacted without legislative competence or is in violation of any of the fundamental rights guaranteed under Part III of the Constitution of India that enactment can be struck down.

20.9. Even as regards a challenge under Article 14 of the Constitution of India when made, what the Court would have to see is whether the Act or amendment is violative of the equality clause or equal protection clause enshrined therein. His submission is that an enactment cannot be struck down by only stating that it is arbitrary or unreasonable. The same would have to be

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NC: 2024:KHC:29383 AND 1 OTHER established to be violative of the fundamental rights guaranteed under Part-III of the Constitution and only then, such a statute could be quashed and, on that basis, it is contended that the Petitioners have not been able to establish and/or satisfy this requirement. 20.10. The said decision of the Hon'ble Apex Court would answer the contention raised by Smt. Sarojini Muthanna, learned counsel for the Petitioners contending that the amendment is arbitrary and unreasonable on the ground that by way of the amendment a member of the Kodava family is now required to partition the property in order to make an entry of his name in the revenue records. Therefore, it is contended that it is unreasonable. The first aspect of requirement of partition and/or 11-E sketch having been dealt with hereinabove, if that aspect is eschewed, then the entire

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NC: 2024:KHC:29383 AND 1 OTHER arguments of Smt. Sarojini Muthanna insofar as the impugned amendment being arbitrary or unreasonable, would not stand.

20.11. It is clear from the reading of the judgements of the Hon'ble Apex Court in Rakesh Kohli's case, Ashoka Kumar Thakur's case, Binoy Viswam's case and Jaya Thakur's case that the scope of challenge to an act of legislation is limited. It is required for the person challenging an enactment or amendment passed by the legislature to establish that the said legislature did not have the competency and/or that the legislation is violative of Part-III of the Constitution of India. If a legislature had a competence to pass an enactment or an amendment, then, there would be no further requirement. It is only thereafter, that the aspect of whether there is a violation of rights guaranteed under Part-III of the Constitution of

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NC: 2024:KHC:29383 AND 1 OTHER India can be made. In the present case, there is no challenge to the competence of the legislature, but the challenge is only on account of the amendment allegedly violating fundamental rights, customs and tradition. 20.12. In view of my above reasoning, I answer Point No.6 by holding that the amendment to Section 8o of the KLRA is not violative of any constitutional provisions or any law and therefore is a valid law.

21. Answer to Point No.7: What is the effect of the impugned amendment?

21.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the impugned amendment, firstly, there will be a breakup in the joint family system. Secondly, the properties will be alienated. Thirdly, as a consequence of both the above,

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NC: 2024:KHC:29383 AND 1 OTHER the customs and traditions of the Kodava race would be violated.

21.2. The decision in B. Mohammad's case, relied upon in this regard, would also not enure to the benefit of the Petitioners, since by way of the amendment no right is taken away, but a right of full ownership is conferred upon the Kodava family as regards the lands owned by them. The corresponding obligation being payment of assessment/taxes. The ownership right now conferred retrospectively, but the obligation on payment of taxes/assessment being prospective, i.e., from the date on which the amendment came into operation , the decision in B. Mohammad's case which relates to the retrospective amendment would not apply. 21.3. The decision in Kongera T. Appanna's case was one relating to the determination of cost of

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NC: 2024:KHC:29383 AND 1 OTHER timber wherein it was held that the timber on Jamma Bane land belongs to the Government and ratable distribution of the cost of timber was ascertained in the said matter. By virtue of the amendment, once the Kodava family is granted full ownership of the land. The ownership of the timber, standing trees, etc., on the said land will also vest with the said family/individual. That being so, the Government will not have any right, title or interest in the timbers, standing trees or otherwise on the said property requiring the calculations. Once the right of the family or occupant are registered pursuant to sub-section (20) of Section 2, the entire process of calculation of timbers, trees or otherwise situated in the Jamma Bane land, permission for their sale and appropriation of the amounts

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NC: 2024:KHC:29383 AND 1 OTHER thereof would no longer be required, unless any other statutory provision mandates so. 21.4. One other effect of the amendment would be that with the full ownership of the land being vested with the family, the Government would not have any right, title or interest over the said property.

21.5. All the trees situated thereon and produced thereof would vest with the owner of the land. The question of the Government claiming any seigniorage or the like, as regards the trees grown on the said land would not arise. Any permission required by the family or its members for cutting any specific trees would necessarily have to be obtained and the procedure and formalities related thereto be adhered to. However, the State cannot claim

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NC: 2024:KHC:29383 AND 1 OTHER any ownership of anything grown on the said land.

21.6. In view of my answers to the earlier points, having come to a conclusion that the entire family will be registered as an occupant of the Jamma Bane land, I am of the considered opinion that by way of the amendment, there will be no requirement of partition to be effected among the members of the family. This is also borne out by the affidavit filed by the Under Secretary to the Revenue Department, Government of Karnataka, wherein it is categorically stated that for the purpose of registration of the name of a family member in the RTCs, there would be no requirement for a partition to be effected and/or for 11-E sketch to be obtained as regards the area falling to the share of each individual family members.

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NC: 2024:KHC:29383 AND 1 OTHER 21.7. By way of amendment, what is now only achieved is that the entire family would be registered as the occupant of the land including Jamma Bane land. The names of all the members of the family would also be entered into in Column No.9 thereby recognizing the rights of the entire family in respect of the property owned by the family including Jamma Bane land.

21.8. Whether they partition or not, whether they continue as a single united family or not and in the event of a partition being effected, which portion of the property would come to which member of the family and the rights of each member of the family to offer prayers to their ancestors as also to be buried/cremated in the family property are not matters which are covered by the amendment. These are aspects which are best left to the wisdom of the family

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NC: 2024:KHC:29383 AND 1 OTHER and its members. If all the members want to continue to be joint, the family could continue as a joint family property exercising ownership rights over the entire property. If any member of the family were to want to separate, the same would have to be so done in accordance with an agreement between the parties or in accordance with law since the Kodavas are governed by the Mitakshara branch of the Hindu law and as such, would be governed by the Hindu Succession Act, 1956 as amended from time to time.

21.9. Ultimately the effect of the impugned amendment is to confer full ownership rights over the Jamma Bane land and does not in any manner compel any member of the family to partition/separate himself or herself from the family and/or for the property to be divided by metes and bounds.

22. Answer to Point No.8: What order?

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NC: 2024:KHC:29383 AND 1 OTHER 22.1. In view of my answer to all the points above, I do not find the amendment to be violative of any law, let alone the Constitution of India. The grounds of challenge made to the said amendment, therefore, fail. The Petition stands dismissed.

22.2. The concerned District Administration/District Revenue Authority is hereby directed to issue a circular giving clarity and stating in detail the due process for entering the names of the joint family land owners into the revenue records vis-à-vis the amendment to Sub-section 2o of Section 2 of the Karnataka Land Revenue Act, 1964. The same to be complied with, within 30 days from the date of receipt of this order.

Sd/-

JUDGE PRS

Sri Kolathanda U Ragu Machaiah vs State Of Karnataka on 25 July, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 55534 OF 2013 (KLR-RES)
C/W

WRIT PETITION NO. 27143 OF 2013 (KLR-RR/SUR)
WRIT PETITION NO. 27144 OF 2013 (KLR-RR/SUR)

WRIT PETITION NO. 38470 OF 2013 (KLR-RES)

IN W.P.NO.55534/2013

BETWEEN

1. BRIGADIER MALETIRA A DEVAIAH (RETD.)

AGED ABOUT 63 YEARS

FLAT NO. 536, JALAVAYU TOWERS

NGEF LAYOUT, INDIRA NAGAR POST

BANGALORE-560038

Digitally signed
by

NARAYANAPPA
LAKSHMAMMA

Location: HIGH
COURT OF
KARNATAKA

2. MR CHAPPANDA K NANAIAH

AGED ABOUT 68 YEARS

KOLATHODU, BYGODU VILLAGE
HATHUR POST
KODAGU-571218

3. COLONEL KALENGADA M GANAPATHY

AGED ABOUT 58 YEARS

A-102 MALAPRABHA

NATIONAL GAMES VILLAGE

KORAMANGALA
BANGALORE-560047

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013

WP No. 27144 of 2013

AND 1 OTHER

4. MR BATTIYANDA A JAGADEESH
AGED 49 YEARS
NARIYANDAD VILLGE
CHEYANDANE POST
VIRAJPET
SOUTH COORG-571218
5. MR PALANGANDA T BOPANNA
AGED ABOUT 63 YEARS
144/1, THIRD CROSS, BYRASANDRA ROAD,
JAYANAGAR 1STBLOCK EAST
BANGALORE-560011
6. BALLACHANDA A NANAYYA
AGED ABOUT 73 YEARS
DECHOOR
MADIKERI-571201
7. BOLLARPANDA K BOPANNA
AGED ABOUT 29 YEARS
BEGUR VILLAGE
KARGUNDA POST
MADIKERI TALUK
KODAGU-571201
8. PATTAMADA I KALAPPA
AGED ABOUT 82 YEARS
CHARAMBANE POST
MADIKERI
KODAGU-571201
9. IMUDIANDA P CARIAPPA
AGED ABOUT 73 YEARS
SURLABE VILLAGE POST
SOMAVARPET TALUK
KODAGU-571274
10. PULLIANDA B CHINAPPA
AGED ABOUT 63 YEARS
MAGULLA VILLAGE
IMANGALA POST

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

VIRAJPET
SOUTH KODAGU-571218

11. MACHIMANDA C APPACHU
AGED 66 YEARS
KAVADI VILLAGE
AMATHI POST
SOUTH KODAGU-571218
12. MACHETTIRA K MONAPPA
AGED 70 YEARS
NO.2637 (17/B) 36TH A CROSS
9THBLOCK, JAYANAGAR
BANGALORE-5600069
13. KARTHAMADA M POONACHA
AGED 60 YEARS
BIRUNANI VILLAGE & PO
VIRAJPET
S COORG-571215
14. MALACHIRA P SOMAIAH
AGED 59 YEARS
NALLOR VILLAGE
KIRGOOR POST
KODAGU-571215
15. KUTTANDA M CHENGAPPA
AGED 65 YEARS
C/O K M IYAPPA
SITA NIVAS
AMMATHI TOWN AND POST
KODAGU-571211
16. CHETTRUMADA M POONACHA
AGED 62 YEARS
NALOOR VILL
KIRGOOR PO
S KODAGU-571215
17. KAMBANDA M JAGADESH

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

AGED 53 YEARS
BETOLI VILLAGE & PO
VIRAJPET
KODAGU-571215

18.ALARANDA B MADAPPA
AGED ABOUT 31 YEARS
NALADI VILL
KAKABE PO
MADIKERI
KODAGU-571218

19.KAMBEYANDA M NANJAPPA
AGED ABOUT 42 YEARS
KUNJILA VILLAGE
KAKABE PO-571212

20.ALLAYANDA S AIYAPPA
AGED ABOUT 52 YEARS
NALADI VILLA ,KAKABE PO
MADIKERI
KODAGU-571212

21.PATAMADA U AIYAPPA
AGED 28 YEARS
S/O SANNA PULIKOT PO & VILL
IYAGERI, MADIKERI
KODAGU-571212

22.BACIMANDA P CHINAPPA
AGED 36 YEARS
KAKABE PO
KUNJLA VILLAGE
MADIKERI
KODAGU-571212

23.MARCHANDA K THIMMAIAH
AGED ABOUT 56 YEARS
MARNDODA VILL & P O
YAVAKAPADI-571212

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

24.BOLLAJIRA B AIYANNA
AGED ABOUT 31 YEARS
K BADAGA, FMKMC COLLEGE POST
MADIKERI-571201

25. AMMATANDA E MEDAPPA
AGED 29 YEARS
HAKATHUR VILL & POST
MADIKERI-571201
26. MACHAMADA K RAMESH
AGED ABOUT 56 YEARS
TAVALAGIRI VILLAGE
T SHETTIGERI POST
VIRAJPET
KODAGU-571218
27. MANNERA B NANJAPPA
AGED ABOUT 64 YEARS
HARIHARA VILL & POST VIRAJPET
KODAGU-571218
28. MALCHIRRA C ASHOK
AGED ABOUT 52 YEARS
AIYAPPA TEMPLE ROAD
PONNAMPET
VIRAJPET
KODAGU-561218
29. KOTRANGADA N MANU SOMAIAH
AGED ABOUT 51 YEARS
KAMATAKERI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
30. AJJAMADA A SUBRAMANI
AGED ABOUT 48 YEARS
KURCHI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
31. BADMANDA D LAVA
AGED ABOUT 41 YEARS

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

- WEST NEMMALE
VIRAJPET
KODAGU-561218
32. HOTTENGADA R SOMANNA
AGED ABOUT 34 YEARS
HYSODULUR VILLAGE
HUDIKERI POST
VIRAJPET
KODAGU-561218
33. PUTHARIRA T KALAIAH

AGED 36 YEARS
CHETHALI VILLAGE AND POST
MADIKERI
KOKDAGU-561201
34. BALLEYADA G PRAKASH
AGED 32 YEARS
NAPOKULU VILL & POST
MADIKERI
KODAGU-561201
35. KORAVANDA C DEVAIAH
AGED ABOUT 30 YEARS
KADAGADAL VILL & PO
MADIKERI
KODAGU-561201
36. CHENDANDA C DEVAIAH
AGED 69 YEARS
BALGODU VILLAGE
BITANGALA POST
KODAGU DISTRICT-571218
37. THABBANGADA S CHITTIAPPA
AGED 68 YEARS
THAVALEGERI VILLAGE
T SHETTIGERI PO
VIRAJPET
SOUTH KODAGU-571218

...PETITIONERS

(BY SMT: SAROJINI MUTHANNA., ADVOCATE)

AND:

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

- 1 . STATE OF KARNATAKA
REP BY IT SECRETARY
DEPARTMENT OF REVENUE
VIDHAN SOUDHA
BANGALORE - 1
- 2 . SECRETARY TO GOVERNMENT
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION
VIDHAN SOUDHA
BANGALORE - 1
- 3 . DEPUTY COMMISSIONER
MADIKERI,
KODAGU 571 201

... RESPONDENTS

(BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KOLATHANDA U RAGU MACHAIAH AGED ABOUT 58 YEARS SECOND RUDRAGUPPE VILLAGE KANDANGALA POST VIRAJPET TALUK KODAGU 571 218 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A NOTIFICATION NO. SAMYASHEE 53 SHASANA 2011, BANGALORE DT.1.2.2013 AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KIMMUDIRA A RAVI CHENGAPPA AGED ABOUT 50 YEARS MADENAD VILLAGE & PO MADIKERE TALUK KODAGU-571201 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN 1 . KETOLIRA P SOMANNA AGED ABOUT 51 YEARS YAVAKAPADI VILLAGE & PO MADIKERI, KODAGU-571212 2 . PANDANDA J. NARESH AGED ABOUT 50 YEARS

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NC: 2024:KHC:29383 AND 1 OTHER YAVAKAPADI VILLAGE & POST, MADIKERI, KODAGU-571212 3 . KALIYANDA A. AIYAPPA AGED ABOUT 35 YEARS KAKABE VILLAGE & P.O.

MADIKERI KODAGU-572124 . MANAVATIRA SUNNY POOVAIAH AGED ABOUT 46 YEARS F2, CRESCENT OPULNET, 12THCROSS, 13THMAIN, BTM, 2NDSTAGE, BANGALORE-76 ...PETITIONERS (BY SMT: SAROJINI MUTHANNA., ADVOCATE) AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011

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NC: 2024:KHC:29383 AND 1 OTHER ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ CAV ORDER

1. The Petitioner in W.P.No.55534/2013 is before this Court seeking for the following reliefs:

a. Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b. Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c. Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records. d. Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

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NC: 2024:KHC:29383 AND 1 OTHER e. Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

f. Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

2. The petitioner in W.P.No.27143/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013 as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.

d) Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

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NC: 2024:KHC:29383 AND 1 OTHER

f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

3. The Petitioner in W.P.No.27144/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the Respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the Respondents to refrain from asking holders of Jamma bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the

revenue records.

- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

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NC: 2024:KHC:29383 AND 1 OTHER

4. The Petitioner in W.P.No.38470/2013 is before this Court seeking for the following reliefs:

- a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
- b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
- c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.
- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

5. The Petitioners belong to the Kodava race (Coorg race). They claim to represent their respective Okka or joint family as shareholders of the joint family

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NC: 2024:KHC:29383 AND 1 OTHER properties of their respective clan. The lands owned by the joint family are customary privileged Jamma land tenures governed by customary laws that prohibit partition and alienation of these traditional lands, which they claim to be peculiar to the Coorgis/Kodava race.

6. The Petitioners are aggrieved by the Karnataka Land Revenue (III) Amendment Act 2011, by virtue of which an explanation is added to Subsection (2o) of Section 2 of the KLR Act as under:

(2o) "Occupant" means a holder in actual possession of unalienated land other than the tenant:

Provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Explanation.--A ryotwari pattadar in the Mangalore and Kollegal Area and Bellary District, a pattadar or shikmidar in the Gulbarga Area and a holder or land-holder including Jamma Bane privileged and un-privileged, Umbli land in the Coorg District shall be deemed to be an occupant of such land for purposes of this Act.

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NC: 2024:KHC:29383 AND 1 OTHER

7. Further amendment is made to Section 8o of the KLR Act where after the words "wherever situate" the following words are added "including unalienated Jamma Bane land held by the occupant in Coorg district" which after amendment reads as under:

8o. All land liable to pay land revenue, unless specially exempted.--All land, whether applied to agricultural or other purposes and wherever situate, including un-alienated Jamma Bane land held by the occupant in Coorg District, is liable to the payment of land revenue to the State Government according to the provisions of this Act, except such as may be wholly exempted under the provisions of any special contract with the Government or any provision of this Act or any other law for the time being in force.

Provided that the State Government may, by notification or order and subject to such conditions if any, as may be specified therein, for reasons to be recorded in writing, exempt either prospectively or retrospectively any class of lands in any area or areas or any part thereof from the payment of land revenue.

8. The Petitioners claim that these two amendments would disrupt the Kodava joint family, in furtherance of such amendment, the Revenue authorities are insisting the joint family members furnish a partition

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NC: 2024:KHC:29383 AND 1 OTHER deed for the purpose of entry of their name in the revenue records as 'Occupant', thereby forcing the joint family to execute a partition deed, when in fact they do not intend to do so. Such a demand is contrary to the customary and religious practice of the Kodava race and it is in that background that the Petitioners have filed the above petitions challenging the amendment.

9. Smt. Sarojini Muthanna, Learned Counsel for the Petitioners would submit that, 9.1. The amendments made are ultra vires the constitution thereby void. Prior to the amendments being made, the names of all members of the family were entered in the revenue records in the 9th column. After the amendment, the revenue authorities are seeking for a partition deed, as also a 11-E sketch demarcating the share of the person

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NC: 2024:KHC:29383 AND 1 OTHER who wants his name to be entered in the revenue records. Failure to furnish the above has resulted in not entering the names of such family members in the revenue records, thereby constraining and in fact, coercing the Kodava family to execute a partition deed, divide the property by metes and bounds, get a survey sketch done and thereafter place on record the partition deed and 11E sketch, and it is only thereafter that the entry is made in the revenue records.

9.2. Once a partition is executed and entry made in the revenue records, a joint family member who is registered as an occupant is treated as an absolute owner of the property, which has resulted in such occupants transferring the property to third parties, which is opposed to customary laws of Kodavas inasmuch as the properties are required to be retained as a joint

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NC: 2024:KHC:29383 AND 1 OTHER family property for the use and benefit of all members of the joint family. By alienating a portion of the property to third parties, the other members of the family are deprived of the usage of the said property. This is contrary to Section 100 of the KLR Act, which is reproduced hereunder for easy reference:

100. Occupancy not transferable without sanction of prescribed authority nor liable to process of a Civil Court.-- In any case, where an occupancy is not transferable without the previous sanction of the prescribed authority and such sanction has not been granted to a transfer which has been made or ordered by a Civil Court or on which the Court's decree or order is founded,--

(a) such occupancy shall not be liable to the process of any Court and such transfer shall be null and void; and

(b) the Court, on receipt of a certificate under the hand and seal of the Tahsildar, to the effect that any such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted, shall remove the attachment or other process placed on or set aside any sale of or affecting such occupancy.

9.3. She further submits that this is also contrary to the erstwhile Coorg Land Revenue Regulations, 1899 ['CLRR' for short], more particularly

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NC: 2024:KHC:29383 AND 1 OTHER Section 45 and 145, which are reproduced hereunder for easy reference:

45 Summary eviction in case of alienation of certain lands :-

Except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government. 'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

145. Bar of suits in certain matters :-

Except as otherwise provided by this Regulation, no suit shall be brought in any Civil Court in respect of any of the following matters, namely.

- (i) the limits of any land which has been defined by a Revenue Officer as land to which this Regulation does or does not apply;
- (ii) any claim to compel the performance of any duties imposed by this Regulation or by any other enactment for the time being in force or any Revenue Officer as such;
- (iii) any claim to the office or emoluments of parpattigar or Village Officer or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

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NC: 2024:KHC:29383 AND 1 OTHER

- (iv) any notification directing the making or revision of a record-of- rights;
- (v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;
- (vi) the correction of any entry in a record-of-rights, annual record or register of mutations; (vii) any notification of a general assessment having been sanctioned by the Central Government;
- (viii) the claim of any person as to liability for an assessment of land revenue or of any other revenue under this Regulation;
- (ix) the amount of land revenue to be assessed on any holding under this Regulation;
- (x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Regulation, or any cess, charge or rate to be assessed on any holding under this Regulation or under any other enactment for the time being in force;
- (xi) any claim to hold free of revenue or at favourable rates any land, mills, fisheries or natural products of land or water;
- (xii) any claim connected with or arising out of the collection of the land revenue by the Government or the enforcement by the Government of any process for the recovery thereof;
- (xiii) any claim to set aside on any ground, other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue;
- (xiv) the amount of, or the liability of any person to pay, any fees, fines, costs or other charges imposed under this Regulation;
- (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the

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NC: 2024:KHC:29383 AND 1 OTHER distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

(xvi) any claim arising out of the liability of an assignee of land revenue to pay a share of the cost of collecting or reassessing such revenue. 9.4. The Kodava joint family is forced to do the above, as without the entry of all the names of all the members of the joint family in the revenue records, such a member cannot approach any Bank for crop loan and, more importantly without the name being

entered into in the revenue records, no exemption is given to any member of the Kodava Race in respect of arms licence, for which verification is made upon the entry of their name in the revenue records.

9.5. Each Kodava 'Okka' (family) holding comprises of an 'Aiyne Mane' [main dwelling house] and a 'Kaimada' [temple for ancestors] located in the

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NC: 2024:KHC:29383 AND 1 OTHER said land which belongs to the entire joint family. On all occasions, both auspicious and inauspicious, as also during festivals, prayers are offered at these Kaimadas to their ancestors who are known as 'Karona'. Each and every member of the family is entitled to offer prayers to their ancestors. The Kodavas being ancestor worshippers, an alienation if made, of the land where the Kaimada is located would deprive all family members of their entitlement to ancestral worship, which is an essential practice of the Kodavas.

9.6. Kodavas are a separate ethnic minority having a distinct lifestyle, culture, tradition and custom, which is now upset by the impugned amendment. Apart from an Aiyne Mane and a Kaimada in the common lands, a 'Thutengalas' i.e. family graveyard is maintained. All members of the family are buried in that land

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NC: 2024:KHC:29383 AND 1 OTHER which is also part of the Jamma land. This land was also held in common by the joint family. 9.7. Once partition is effected this land would fall to the share of one particular family member, thus again disrupting the family activities. In the event of the said land being alienated and or the person to whose share this land falls under a partition deed, not permitting other family members to offer their prayers and or worship their elders, the rights of the other family members would be adversely affected. 9.8. Jamma Bane lands are privileged tenures in terms of Rule 164 of the CLRR, their inclusion under Subsection (20) of Section 2 would undo the Kodava customary laws. This aspect had been recognized by the British during their administration of the Coorg area and as such, no member of the joint family can seek or

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NC: 2024:KHC:29383 AND 1 OTHER transfer any land without the consent and concurrence of all other elder members of the family. Furthermore, there was a prohibition in transferring any land outside the patrilineal clan of the family, thus, the transfer was within the clan, safeguarding the interest of all members of the family. Jamma Bane lands were used for the purpose of preparing leaf manure, grazing of cattle, etc. and thus, were used as a part of this warg land (wet land). The manure generated from the Bane lands are used in the warg land, the cattle used to till the wet land would graze in the Bane land, etc. 9.9. Each Kodava family has a family name, which is also called the house name, which is used by each of the members of the family. The owner and/or occupant of the land in Coorg is not an individual member but an abstract family name/house name, and the

other members of

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NC: 2024:KHC:29383 AND 1 OTHER the family are treated as division holders or maintenance division holders who can use the land and the produce made therein for their maintenance.

9.10. The elder of the family is the 'Patedara' in whose name the property is registered by including the Bane land into a regular land, the said Bane land would become amenable to the imposition of tax even though there is no cultivation envisaged as regards the Bane lands. Jamma lands are of two varieties, alienated and unalienated. Alienated Jamma Bane lands were used for cultivation of coffee and unalienated Jamma lands are those attached to a paddy field or warg, sometimes it is called Jamma wargs which are only used for leaf manure and grazing of cattle, there being no cultivation in such lands. Until the amendment, these lands were never taxed by

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NC: 2024:KHC:29383 AND 1 OTHER the British or the Kings or, even after independence, by the Government, it is only now that these lands are sought to be taxed by way of the impugned amendment.

9.11. In this regard she relies upon page 520 of 'the Karnataka State Kodagu District Gazette' by Suryakanth Kamath, which is reproduced hereunder for easy reference:

The real object of enforcing these restrictions is vividly described in a letter to the Government of India dated 12.9.1865 and it was approved by the Government of India. "In regard to sale of Jamma lands, I am prepared to admit its advisability. Many impoverished Coorgs might wish to dispose off their lands (jamma) but I think official sanction to such a step should be withheld as hitherto as I believe it would be fraught with danger to the nationality of Coorgs and the tenure itself, of which the conditions of service are a mani feature, would be abrogated by permitting such land to fall into the hands of Europeans or natives of Mysore from whom a service like that rendered by Coorgs could not be expected".

9.12. She also relied on the publication of 'Land Systems of British India' by B.H. Baden

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NC: 2024:KHC:29383 AND 1 OTHER Powell, more particularly page 475 thereof, which is reproduced hereunder for easy reference:

6. Báné Lands.

(It has already been mentioned that with every holding of jamma land (and the same is true also of ságu land) in Coorg proper, the holder acquires the use of an appurtenant plot of 'báné land that is, a plot of forest land varying (and not always according to the size of the principal holding) from 4 or 5 to 300 acres. It is now, by rule, limited to double the area of the principal holding. The báné is located on the slopes above the valley where the rice- cultivation is, or somewhere near it, and it is destined to supply the warg-holder with grazing, timber, firewood, and above all with bamboos, branches, and herbage, which he burns on the rice- fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural domestic wants of the holder; and if timber, &c., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood. Sandal-wood trees found in báné land are always reserved as the property of Government. In the jamma tenure, as the báné is included in the sanad, it is virtually a part of the property. In the ságu tenure there is no sanad; but the attached area of báné must be held and used subject to the same conditions. Under these circumstances, the báné cannot be regarded as actually the property of the tenure-holder, nor, on the other hand, as land at the disposal of Government. It is rather land which is held as an appendage to a warg or estate, or to a ságu holding, in a sort of trust, or on condition for a certain use.)

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NC: 2024:KHC:29383 AND 1 OTHER Had the báné so remained, there would be nothing more to be said about it. In old days, in Central Coorg at any rate, no one wanted to cut trees for sale, for they had no market value; no one cultivated the báné, beyond raising a few orange or plantain-trees, or ploughing up parts where it was possible to raise a little dry cultivation which was not thought worthy of notice; hence the báné, as an appendage, did not subject the holding to any further revenue- assessment. But in time the land became more valuable, and people began to sell the trees, or what is more, to cultivate coffee. So long as this was done without general clearing, it did little harm; but in time, as larger clearances were made, the utility and natural purpose of the báné were threatened; and moreover the people soon attempted to alienate the land itself, selling or leasing it to coffee- planters; and when this was found profitable, fictitious 'wargs' were imagined and báné applied for under that pretence, and then used for coffee-planting.

The question of preventing these abuses soon arose, and 'báné' rules are now in force as regards assessment. It has for some years been allowed, as a concession, to cultivate coffee on ten acres in the báné without charge; and in 1875 a further concession was made to 'jamma' báné, so that coffee might be cultivated even in excess of ten acres provided that the bushes were planted under the natural forest without removing the large tree. All cultivation in excess of this is assessed. 9.13. Even though the Warg lands are held separately and even though alienated Jamma Bane lands are also held separately, the unalienated

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NC: 2024:KHC:29383 AND 1 OTHER Jamma Bane lands are held jointly and there can be no partition of such unalienated Jamma Bane lands. Her submission is that the privileged Jamma lands or lands of privileged tenants, though are heritable, are not transferable. By effecting a

partition, the very purpose of such privileged tenure is lost. Her submission is that the usage of the word privileged itself is a misnomer and misconstrued. Privilege is not defined under the Act, the word is used very loosely and has undergone changes from time to time. 9.14. Initially Jamma lands were granted to a member of the Coorg race by the then King for the services rendered in the Army by such member of the Coorg race and due to the lands being so granted and being privileged and being of the privileged tenure, the assessment of the said land was also on a reduced basis. She

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NC: 2024:KHC:29383 AND 1 OTHER refers to a Hukumnama issued by the then King regarding one such land and submits that the Jamma right holders paid only half the assessment in terms of the sannad issued by the King.

9.15. Section 45 of the CLRR restricts the sale of the property. The CLRR also provided for retention of the land in the family by not assessing the entire land.

9.16. Even as regards the alienated Jamma land, which is used for coffee plantation, 10 acres of coffee cultivated area was free from assessment and lands only in excess of 10 acres was assessed. Since most Bane lands had remained uncultivated, to encourage cultivation, 10 acres of such Bane lands used for cultivation remained free from assessment.

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NC: 2024:KHC:29383 AND 1 OTHER 9.17. The land used for cultivation was called 'privileged saguvali' and the lands which were not so used continued to be called "Jamma Bane". It is the land which was used for agricultural purposes but was also assessed to tax, those lands were called unprivileged Bane lands, thus the use of the terms 'privileged' and 'unprivileged' was only to indicate whether the land was subject to assessment of tax or not. 9.18. In the year 1974 this exemption from assessment was withdrawn and even privileged Jamma Bane lands were made amenable for full assessment, however the nomenclature of privileged Jamma Bane and unprivileged sagu bane has continued. She submits that this being the distinction, she relies on the Full Bench of this Court in the case of Cheekere Kariyappa Poovaiah -v- State of

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NC: 2024:KHC:29383 AND 1 OTHER Karnataka1, more particularly paras 11, 12, 13, 18, 19 and 22 thereof, which are reproduced hereunder for easy reference:

11. The aforesaid scheme of the Coorg Regulation and the clear picture of different types of Jama Banes which is projected bring-out one salient fact, that in case of privileged or unprivileged Banes which were not alienated and erstwhile Bane holders of such Bane lands continued to have limited privileges qua the Bane lands held by them viz., that they had to use the attached Bane for servicing the holding of the wet land which was held by them on Jama tenure and that he could use this Bane

for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this Bane for aforesaid limited purpose without any liability to pay any land revenue. It is also pertinent to note that in such privileged or unprivileged Bane, the concerned holder had no interest or right in the sub-soil of the Bane as clearly laid-down by Section 47 of the Regulations referred to earlier. He had also no interest in the wood of the trees standing on the Bane save and except taking wood for the limited domestic purposes, and for purposes of agriculture. He had no right to take the wood of trees for any commercial or other purposes unless he has paid the full timber value for cutting such trees, meaning thereby the trees were clearly shown to have been belonging to the Government, the timber of which could not be utilised by Bane holder unless he pays full price for the timber of such trees. This amounted to sale of timber wood by the Government to the concerned Bane holder. Such Banes held on privilege tenure also could not be alienated without paying nazarana as per Rule 167 to the Government.

That also indicated that such Bane holders had no proprietary interest in the land and when they wanted to alienate such privileged Bane lands held by them they had to pay nazarana to the Government apart from obtaining permission from the concerned authority under Section 45 and if that was not done he would be ILR 1993 KAR 2959

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NC: 2024:KHC:29383 AND 1 OTHER liable to be summarily evicted from such Bane, as that would be considered to be a Bane land, land revenue of which was considered to be wholly released. Therefore, on a conjoint reading of Sections 42, 45 and 47(1) of the Regulation and Rule 167 of the Rules framed thereunder, it becomes clear that holder of a Jama Bane land which was not alienated and which was either a privileged Bane or unprivileged Bane, was not proprietor of this Bane. But he had limited privilege as indicated in the definition of Bane found in the Regulation and therefore in the light of Section 42 such unalienated privileged or unprivileged Bane continued to vest in the Government.

12. This conclusion of ours is not in any way whittled down by sub-section 2 of Section 47 of the Regulation as it deals with a situation wherein for exercising any sub-soil rights in Bane lands mentioned in sub-section 1 Section 47, it becomes necessary either for the Government or any person acquiring rights from the Government to acquire any land in the holding or enjoyment of others. Then such land can be acquired under the provisions of Land Acquisition Act, 1894. This sub-section 2 naturally contemplates acquisition of some other lands and not acquisition of Bane lands itself as it continued to remain in the ownership of the Government. Working of sub-section 2 of Section 47 could better be highlighted by an illustration.

13. Supposing unalienated Bane land is held by a person, the sub-soil rights in which belong to Government. The Government enters into a contract with a Contractor permitting him to mine subsoil mineral found in the Bane-land and if such contractor had to approach the Bane land

through the land of somebody else, then to the extent somebody else's land viz., neighbour's land is to be utilised by way of passage for approaching the Bane land, that much portion of the land in possession of the neighbour could be acquired under the Land Acquisition Act, Section 47(2) cannot be read to mean that compensation is to be paid to the holder of unalienated Bane land by acquiring the Bane land as that situation would never arise in view of the fact that Bane land itself remains vested in the State.

18. The aforesaid provisions of 1964 Act clearly show that even after Coorg Regulation was repealed when the 1964 Act came into force, if a holder of Jamma

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NC: 2024:KHC:29383 AND 1 OTHER Bane land, whether privileged or unprivileged was holding the said Jama Bane land in the same condition then his privileges in Jama Bane land which existed earlier viz., utilising this land as an appendage to warg Jama holding for servicing the said warg and for enjoying privilege free of land revenue and also utilising the Bane land, for grazing of his cattle and for supplying leaf manure, fire-wood, timber required for domestic and agricultural purposes of the cultivator so long and he continued in possession of the wet land, were all preserved and continued to remain vested in him even after 1964 Act. That position is exemplified by Section 79 especially sub-section 2 thereof to which we have already made reference. Therefore, the status-quo-ante regarding privileges of Jama Bane land holder qua Jama Bane land as such as existed during the operation of 1899 Regulation continued to operate after 1964 Act but it never got enlarged into full-proprietory ownership of such holders qua their Jama Bane land. On the contrary the right to trees growing on the land which had continued to vest in the Government earlier did not get divested nor did it vest in Jamma Bane holder under 1964 Act and even sub-soil which did not vest in the Jama Bane holder under 1899 Regulation also did not get vested in the Jamma Bane holder. On the other hand as per Section 70 of the Act they all continue to remain vested absolutely in the State Government. We must however add one rider to this position. If, during the time of operation of 1899 Coorg Regulation or even priori thereto, the Jama Bane land had ceased to be a Jama Bane as such and had become an alienated Bane and had got detached from the Service yoke of the warg land to which earlier it was attached and if it was fully assessed, irrespective of the fact whether such separation of the Jamma Bane from the warg land to which it was attached was sanctioned under Rule 136 of the Coorg Rules by Deputy Commissioner or not, and whether any penal assessment was levied on such Jamma Bane holder or not, such Bane land holder could not be said to be having only limited privileges qua such alienated Banes. On the contrary if the Jamma Bane holder was the holder of any alienated Bane on the coming into force of Karnataka Land Revenue Act, 1964, he became an occupant of such fully assessed erstwhile Jamma Bane land and was entitled to all the rights and obligations of an occupant-holder of an unalienated land paying full assessment to the Government and therefore he became an occupant of such land within the meaning of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. In this connection we may also refer to one aspect of the matter which was brought to our notice and on which there cannot be any controversy.

19. During the time when Regulation 1899 was holding the field and even thereafter on many occasions the State of Karnataka acquired the rights of Jamma Bane land holders under Land Acquisition Act. Our attention was invited to the Coorg Gazette of 1956 to show a few samples of such Notifications. One such Notification found at page-39 of the Coorg Gazette refers to Government Notification dated 30-12-1955 seeking to acquire one privileged Jamma Bane land Survey No. 24/1 under the provisions of Land Acquisition Act. Similarly, at page No. 89 is found a Notification dated 2.2.1956 by which certain privileged Jamma Bane lands were sought to be acquired under Section 4(1) of the Land Acquisition Act 1894. Third such Notification is found at page No. 93. It refers to acquisition of privileged Jamma Bane land under Section 4(1) of the Land Acquisition Act. Similarly, such another Notification dated 20-2-1956 is found at page 94 of the Gazette. At page 117 is found a Notification dated 6.3.1956 seeking to acquire privileged Jamma Bane lands under Section 6 of the Land Acquisition Act 1894. Relying on these Notifications it was vehemently contended by learned Counsel for the Petitioners that these acquisition proceedings themselves show that the Government Authorities treated holders of privileged Jamma Bane lands as having proprietary interests, otherwise there would have been no occasion for the Government to acquire these lands. Now, it must be noted that even a privileged Jamma Bane holder had some interest or privilege in the Jamma Bane land though he may not be a full proprietor thereof. As we have noted earlier he had certain privileges flowing from his occupation of privileged Jamma Bane land. This type of privileges would necessarily show some restricted interest in these lands. If the Government wanted to abolish even these privileges and concessions which were otherwise giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under Land Acquisition Act, and obviously compensation was payable to such privileged Jamma Bane holders by evaluating their limited interest and not the full interest as the proprietor. Therefore, from the mere fact that these

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NC: 2024:KHC:29383 AND 1 OTHER privileged bane lands were put to acquisition it cannot be inferred of necessity that holders of such Jamma Bane lands were treated by the Government to be the full owners of such lands. As we have seen earlier except these limited privileges and concessions in privileged Jamma Bane lands they had no right in the sub-soil, they had no ownership of the trees growing thereon. They cannot even cultivate these lands. Therefore, they had merely the right to enter upon the lands to collect the leaves to utilise as manure or for collecting wood for domestic or agricultural purposes and nothing more. This limited privilege or right, if had to be acquired, had to be evaluated and paid for, consequently the acquisition notifications covering these lands would be an equivocal act and cannot be treated to be acknowledging the full proprietary right of privileged jamma bane holders in such lands. It is axiomatic that a full proprietary ownership of land would entitle the owner to be the proprietor of all the sub-soil rights upto the centre of the earth, all surface rights on the land, all the rights in the usufruct of the land, full rights in all the trees standing on the land save except reserve trees and he would be owner of the air-column upto the sky over that land.

Such types of rights were never made available to the privileged or unprivileged Jamma Bane land holder during the time of Britishers after 1834 who administered Coorg nor during the time from 1899 when Coorg Regulation held the field and also never thereafter when 1964 Karnataka Act was enacted.

22. Now the stage is reached for us to have a stock of the situation. The aforesaid discussion regarding the rights of the Bane land holders in the back-ground of the relevant periods during which the Bane tenure existed in erstwhile Coorg State and thereafter leads us to the following conclusions:

(i) So long as Jamma Bane land owner occupied the Bane land as an adjunct of the warg land to which it remained attached, he had a limited interest or right in the said Jamma Bane land, namely, to enjoy the privilege of non-payment or revenue, privilege of grazing his cattle in the land, privilege of taking leaf manure from the leaves of the trees standing on the land for the purpose of supplying it as a manure to its warg land, privilege of taking fire wood and timber fire wood and timber required for his agricultural and domestic purposes.

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NC: 2024:KHC:29383 AND 1 OTHER

(ii) Such privileges enjoyed by the Jamma Bane holder do not entitle him to any sub-soil rights in the Jamma Bane land nor had he any interest of right in the standing trees and he could not utilise these trees for commercial purpose without payment of full timber value to the Government. He was also not the owner of the air column above the surface of the land. If the holder of a privileged Bane land sought to alienate his land he had to follow the procedure laid down by Rule 167 of Coorg Land Regulation 1899, which held the field prior to 1964 and if that was not done, the holder of privileged Jamma Bane land becomes liable to be summarily evicted as per Section 45 of the Coorg Land Regulation 1899, during the time when the said Regulation held the field.

iii) Once such Jamma Bane land ceases to be a Jamma Bane, whether privileged or unprivileged and became an alienated Bane, on the Jamma Bane being detached from the service of the Warg land under the orders of the authorities passed under Rule 136 of the Coorg Rules, the holder of such alienated Bane becomes entitled to cultivate the Bane land as a separate holding on payment of full assessment and his rights and obligations qua such land became that of an occupant of an unalienated fully assessed lands and he became entitled to all the rights and subject to all obligations of holder of such land governed by the provisions of Coorg Regulation of 1899, in the first instance, and later under the Karnataka Land Revenue Act, 1964.

iv) Even if a Jamma Bane holder got his Bane land detached from the warg land by voluntarily putting the land under cultivation of coffee or any other crop, and got it fully assessed and paid such assessment, even if he had not obtained orders of the authorities under Rule 136 of the Coorg Land Revenue Rules, the Bane land held by him had to be treated as alienated Bane and all that he had to

pay to the Government was full assessment as well as penal assessment if any that could be imposed on him and full timber value as laid down by Rule 136(5) of the Rules framed under the Coorg Land Revenue Regulation, 1899, and the alienated Bane held by him was not liable to be forfeited to the Government.

ANSWERS

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NC: 2024:KHC:29383 AND 1 OTHER In view of the aforesaid conclusion to which we have reached, it becomes obvious that the Point No. 1 will have to be answered in the negative by holding that holders of Jamma Bane lands both privileged and unprivileged are not full owners thereof but have limited privileges qua these lands as indicated above, subject to the rider that once these Jama Bane Lands became alienated Bane, the holders of such alienated Bane became entitled to the rights and obligations of occupants of unalienated fully assessed lands and were governed for that purpose by the provisions of the Coorg Land and Revenue Regulations so long as they held the field and thereafter they were entitled to the rights and subject to the obligations of the holder and occupant of unalienated fully assessed lands as per the Karnataka Land Revenue Act, 1964. 9.19. Relying on the above, she submits that the Court has committed an error by holding that the Jamma Bane lands are government lands, but no such claim has been made regarding Sagu Bane lands.

9.20. Rule 164 of the CLRR read with Section 45 and 143(f) and 145(xv) prohibits partition and alienation of privileged land by way of sale, gift, mortgage or release without permission of the Chief Commissioner. The said provisions are reproduced hereunder for easy reference:

45. Summary eviction in case of alienation of certain lands.-Except with the permission of the Assistant

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NC: 2024:KHC:29383 AND 1 OTHER Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands, of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, (and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government.

'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

143 Power to make rules. (f) generally, for carrying out the purposes of this Regulation.] 145 Bar of suits in certain matters. (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been

wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

9.21. On that basis she submits that the distinction between the privileged and unprivileged lands had been done away with in the year 1974, the reference to privileged tenure could only be to those enumerated under Rule 164 of the CLRR. 9.22. She refers to the decision of the Hon'ble Apex Court in the case of Kunnathat Thattehunni

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NC: 2024:KHC:29383 AND 1 OTHER Moopil Nair v. State of Kerala², more particularly paragraphs 7, 8, 9 and 10 thereof which are reproduced hereunder for easy reference:

7. The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional.

For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the Petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on AIR 1961 SC 552 : 1960 INSC 255

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NC: 2024:KHC:29383 AND 1 OTHER everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of

inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution.

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the Petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert.

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NC: 2024:KHC:29383 AND 1 OTHER The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in

Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCR p. 279]. S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pp. 299 and 300 of the Report, the relevant portion of which is in these terms:

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a

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NC: 2024:KHC:29383 AND 1 OTHER discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself". (p. 299 of the Report).

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, Section 4 and Section 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

9. The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(f) of the Constitution, also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5-A is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Article 19(1)(f) of the Constitution. Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed

land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders

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NC: 2024:KHC:29383 AND 1 OTHER may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a landholder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on landholders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment.

10. That the provisions aforesaid of the impugned Act are in their effect confiscatory is clear on their face. Taking the extreme case, the facts of which we have stated in the early part of this judgment, it can be illustrated that the provisions of the Act, without proposing to acquire the privately owned forests in the State of Kerala after satisfying the conditions laid down in Article 31 of the Constitution, have the effect of eliminating the private owners through the machinery of the Act. The petitioner in petition No. 42 of 1958 has been assumed to own 25 thousand acres of forest land. The liability under the Act would thus amount to Rs 50,000 a year, as already demanded from the petitioner on the basis of the provisional assessment under the provisions of Section 5-

A. The petitioner is making an income of Rs 3100 per year out of the forests. Besides, the liability of Rs 50,000 as aforesaid, the petitioner has to pay a levy of Rs 4000 on the surveyed portions of the said forest. Hence, his liability for taxation in respect of his forest land amounts

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NC: 2024:KHC:29383 AND 1 OTHER to Rs 54,000 whereas his annual income for the time being is only Rs 3100 without making any deductions for expenses of management. Unless the petitioner is very enamoured of the property and of the right to hold it, it may be assumed that he will not be in a position to pay the deficit of about Rs 51,000 every year in respect of the forests in his possession. The legal consequences of his making a default in the payment of the aforesaid sum of money will be that the money will be realised by the coercive processes of law. One can, easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold at public auction. In the absence of a bidder forthcoming to bid for the offset amount, the State ordinarily becomes the auction purchaser for the realisation of the outstanding taxes. It is clear, therefore, that apart from being discriminatory and imposing unreasonable restrictions on holding property, the Act is clearly confiscatory in character and effect. It is not even necessary to tear the veil, as was suggested in the course of the argument, to arrive at the conclusion that the Act has that unconstitutional effect. For these reasons, as also for the reasons for which the provisions of Sections 4 and 7 have been declared to be unconstitutional, in view of the provisions of Article 14 of the Constitution, all these operative sections of the Act, namely 4, 5-A and 7, must be held to offend Article 19(1)(f) of the Constitution also.

9.23. Relying on the above, she submits that both the amendment, the object, and the reasons of the Amendment Act are vague, and do not provide any reasons to bring about legislation to change the situation. The KLR Act preserves the rights, privileges, obligations and liability acquired, accrued or incurred under the CLRR, which can

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NC: 2024:KHC:29383 AND 1 OTHER be seen and gathered from Section 202(1)(b) of the KLR Act which is reproduced hereunder for easy reference:

"202(1)(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law;"

9.24. She refers to a decision of the Division bench of this Court in the case of B. Mohammad v. Deputy Commissioner, Mangalore³, more particularly para 28, 29 and 30 thereof, which are reproduced hereunder for easy reference:

28. Four rules are laid down in Heydon's case [(1584) 3 Co. Rep 7a.] in the matter of Interpretation of statutes. They are:

1. What was the Common law before the making of the Act:

2. What was the defect and mischief for which the Common law did not provide;

3. What remedy the Parliament has resolved and appointed to cure the defect;

4. The true reason of the remedy.

29. These principles have gained acceptance in various judicial pronouncements. The object of Rule 29A has to be understood keeping in mind the abovesaid rules.

(1998) 6 Kant LJ 30

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NC: 2024:KHC:29383 AND 1 OTHER Rule 29A was enacted to prevent a specific mischief noticed by the Legislature. If we follow what is stated in para 72 of Laxmamma's case [1983 (1) K.L.J. 417], then undoubtedly the object of Rule 29A would be defeated. It was never the intention of the rule makers to permit a grantee of a government land to alienate the grant even to the members of the Scheduled Caste/Tribe on and after 17.10.1974. There was no statutory recognition of such right hitherto, and by means of the Rule, such a condition imposed in any grant at the time of the grant was done away with. The legislature was of the view that these grantees are members of the weaker sections of the society; that they are exploited classes; that special statutory protection is needed to safeguard their interest; that land was granted to landless people and if alienation is allowed unchecked, then the object of the very grant would be defeated; that these persons should not be persons without any land even to erect a homestead. Act 2 of 1979 and its precursor Rule 29A were legislated with intention to achieve the above objects. Therefore, any interpretation to be placed to the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interest.

30. Therefore, the opinion of the Bench in respect of the questions framed is as follows:

(1) No; Rule 29A is not deemed to have been obliterated from backdate (retrospectively) in view of Section 4 and 11 of Karnataka Act 2 of 1979.

(2) In view of Rule 29A of the rule referred to supra, clause 12 of the condition referred to above continued to exist as modified.

(3) on and after 17.10.1974 i.e., the date with effect from which date Rule 29A was introduced and till 1.1.1979 the date of coming into force of Act 2 of 1979 referred to above, all transactions were subject to the said Rule 29A.

9.25. She submits that the amendment now made is contrary to both the CLRR and KLR Act. The

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NC: 2024:KHC:29383 AND 1 OTHER CLRR and the KLR Act provide for customary laws of Kodavas in Coorg viz., Section 45, 110, 143 and 145 and Rules 97(2), 135, 136, 164 and 167 of CLRR, which are continued in Section 220, 75(1), 79(2), 80, 100, 202(1)(b) and 202(4) of the KLR Act. Any law cannot violate customary laws. The present impugned amendment, being in violation of customary law, falls foul of Article 245 of the Constitution. Article 245 is reproduced hereunder for easy reference:

245. Extent of laws made by Parliament and by the Legislatures of States (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

9.26. The Jamma land tenure is a quasi-feudal tenure requiring payment of only half the revenue

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NC: 2024:KHC:29383 AND 1 OTHER assessment, and the male family members being required to provide military services in return to the King.

9.27. She submits that this Court in a decision in the case of C.A. Nanjappa -v- C.M. Thimaya⁴ has categorically held that Coorgis are governed by the Mitakshara School of Hindu law as modified by Coorg customary law, thereby accepting the existence of Coorg customary laws which would override and/or modify the Mitakshara law. 9.28. She reiterates that the Coorg customary law prohibits partition, alienation and/or division of the family, and in this regard, she relies on Section 107 of Maj.Gen.Rob Cole's 'A Manual of Coorg Civil Law' ['Cole's Manual' for short] which is reproduced hereunder for easy reference:

1963 Mys. LJ 487

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NC: 2024:KHC:29383 AND 1 OTHER

107. Some have claimed that all such coffee estates, however, acquired, should belong to the house, or the member to leave the house and live separately; but the former is opposed to usage and the long established custom of self-acquiring property, and the latter would be tantamount to a division of family which is prohibited.

9.29. She submits that the division of property would tantamount to the division of the family itself.

In this regard, she relies on Sections 189 and 192 of Rob Cole's Manual which are reproduced hereunder for easy reference:

189. What Constitutes division-A member is not to be considered as divided off from the family on the simple execution of a deed or list of partition or on his merely living apart; but he must have taken his share and lived apart.

192. Although the residence and partaking of food may be separate, the family may still be united. The marriages, celebration of the Huti and other feasts, the performance of the funeral rites and must occur in the chief house or family residence if the family be one and undivided. If division has taken place such ceremonies are performed by the divided member in his own residence; and he also selects a separate burial ground. The mode of performing the above ceremonies will therefore be a guide as to whether a family is divided or not.

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NC: 2024:KHC:29383 AND 1 OTHER 9.30. She submits that division of property is not recognized among Kodava/Coorg race. In this regard she relies on the Rob Cole's Manual. By relying on Sections 105 and 211 of Cole's Manual she submits that the Coorgis zealously guarded the right to ancestral property and continued the family name of the Patedara clan. Sections 105, 115 and 211, are reproduced hereunder for easy reference:

105. Mode of acquiring self-property- The mode laid down to be followed in acquiring self-property is worth enquiring into, and will show how jealously the Coorgs have guarded the rights of ancestral property and the law of primogeniture. At the time of ploughing and sowing and of harvesting, all the members of the family are bound to devote their whole time to the ancestral property. At the other seasons the Kikkaruru are only bound to give half the day, morning or afternoon, to the work of the house, and spend the other half as they like.

During such leisure hours, if they cultivate pepper, ginger, turmeric, oranges, plantain etc, and from the profits purchase cattle, pigs, fowl etc, such property is considered self-acquired. If such cultivation be carried on lands belonging to the house, one-tenth of the produce or value thereof has to be given to the house. If one other lands, the whole goes to the Kikkaruru.

115. Alienation not allowed-Division of property is not recognised among Coorgs, and no one can alienate any property landed or personal without the consent of all the members of the family. A father cannot alienate

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NC: 2024:KHC:29383 AND 1 OTHER landed property, whether ancestral or self acquired, without the consent of his sons grandsons"

211. Daughters- The unmarried daughter takes precedence. If there be more than one married daughter, any one may be selected, and a marriage by Mukka purje be adopted, and here descendants would bear the ancestral name and not that of the father. The property cannot be divided amongst the unmarried daughters. This shows how tenacious the Coorg are of the idea of continuing the family name. In the event of all the daughter being married, a son of any of them may be selected to be adopted into and to represent the family becoming extinct. In the event of the absence of those relations whose action in the matter is necessary, the more distant kindred, or the villagers in their absence, may authorise such marriage and adoptions 9.31. Due to the tyrannical rule of Raja Chikkaveera Rajendra, Coorgis turned to the British, who had assured them that the civil and religious rights of the Coorgis shall be respected. Thus, she submits that even the British having recognized the civil and religious usage of the Kodavas, never interfered with the practice thereof, the amendment now made will cause disruption in the civil and religious usages of the Kodavas.

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NC: 2024:KHC:29383 AND 1 OTHER 9.32. She refers to a Book by the name, Kodavas-a Pictorial by B.D. Ganapathy and by referring to page 12, 16, 18, 20, 24, 62 and 82 again reiterates that a Jamma Bane land belongs to a family, has an Aiyne mane, a Kaimada and a Thutengala and all the family members gather on auspicious and inauspicious occasions to offer their prayers.

9.33. The fragmentation of the land on account of partition would also result in commercialization of the land which would lead to the denudation of trees, and the construction of irregular and unauthorized buildings. Thus, she submits that this amendment would act contrary to the requirement of maintaining the ecologically sensitive variation in a proper manner. She submits that this is the reason why there have been landslides in the recent past in the district of Coorg.

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NC: 2024:KHC:29383 AND 1 OTHER 9.34. The custom of Coorg requires to be protected and in this regard she refers to the treatises by Salmond Jurisprudence and submits that the power of customary law is equal to that of statutory law and a custom may not only supplement but also derogate statutory law. On this ground, she submits that the customs which have been practiced by the Kodavas cannot be undone by the impugned amendment. The Kodavas would be entitled to act contrary to the statutory law by following their customs.

9.35. She refers to Article 13 of the Constitution of India which is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (2)The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3)In this article, unless the context otherwise requires-

(a)"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b)"laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4)Nothing in this article shall apply to any amendment of this Constitution made under article 368. 9.36. By referring to clause (2) of Article 13 of the Constitution of India she submits that the State shall not make any law which takes away the rights conferred by Part-III and by referring to clause 3(a) of Article 13 she submits that law includes customs and usage in the territory of India. Thus, she submits that the customs and traditions have the same value as a statutory law in force. There is a restriction/embargo on the State to enact any law contrary to

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NC: 2024:KHC:29383 AND 1 OTHER customary traditions, and even if there is a law enacted, the customs and traditions would prevail over such statutory law.

9.37. The customary law of Kodavas restricts them from alienating the joint family property, there is no individual right for any member of the family in the joint family property. The restriction imposed on such members for alienation is not an absolute restraint inasmuch as a member wishes to sell his share in the property, which has not been delineated, can do so in favour of other members of the joint family, thereby preserving the joint family of the Kodavas. In this regard she relies upon the decision of the Apex Court in the case of Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies

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NC: 2024:KHC:29383 AND 1 OTHER (Urban)5, more particularly para 25, 37, 38, 39, 40, 41, 42 and 44 which are reproduced hereunder for easy reference:

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our

Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Acts prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their bye-laws restricting membership based on their own criteria.

37. In our view, the High Court made a wrong approach to the question of whether a bye-law like Bye-law 7 could 2005 (5) SCC 632 : 2005 INSC 208

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NC: 2024:KHC:29383 AND 1 OTHER be ignored by a member and whether the authorities under the Act and the Court could ignore the same on the basis that it is opposed to public policy being against the constitutional scheme of equality or non-discrimination relating to employment, vocation and such. So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye-law or for interdicting the formation of cooperative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in Gherulal Parakh v. Mahadeodas Maiya [1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it

was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.

39. The appellant Society was formed with the object of providing housing to the members of the Parsi community, a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the cooperative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire

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NC: 2024:KHC:29383 AND 1 OTHER to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognised by the Acts enacted in that behalf concerning the cooperative movement. Even today, we have women's cooperative societies, we have cooperative societies of handicapped persons, we have cooperative societies of labourers and agricultural workers. We have cooperative societies of religious groups who believe in vegetarianism and abhor non-vegetarian food. It will be impermissible, so long as the law stands as it is, to thrust upon the society of those believing in say, vegetarianism, persons who are regular consumers of non-vegetarian food. Maybe, in view of the developments that have taken place in our society and in the context of the constitutional scheme, it is time to legislate or bring about changes in Cooperative Societies Acts regarding the formation of societies based on such a thinking or concept. But that cannot make the formation of a society like the appellant Society or the qualification fixed for membership therein, opposed to public policy or enable the authorities under the Act to intervene and dictate to the society to change its fundamental character.

40. Another ground relied on by the authorities under the Act and the High Court to direct the acceptance of Respondent 3 as a member in the Society is that the bye- law confining membership to a person belonging to the Parsi community and the insistence on Respondent 2 selling the building or the flats therein only to members of the Parsi community who alone are qualified to be members of the Society, would amount to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act. Section 10 of the Transfer of Property Act cannot have any application to transfer of membership. Transfer of membership is regulated by the bye-laws. The bye-laws in that regard are not in challenge and cannot effectively be challenged in view of what we have held above. Section 30 of the Act itself places restriction in that regard. There is no plea of invalidity attached to that provision. Hence, the restriction in that regard cannot be invalidated or ignored by reference to Section 10 of the Transfer of Property Act.

41. Section 10 of the Transfer of Property Act relieves a transferee of immovable property from an absolute

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NC: 2024:KHC:29383 AND 1 OTHER restraint placed on his right to deal with the property in his capacity as an owner thereof. As per Section 10, a condition restraining alienation would be void. The section applies to a case where property is transferred subject to a condition or limitation absolutely restraining the transferee from parting with his interest in the property. For making such a condition invalid, the restraint must be an absolute restraint. It must be a restraint imposed while the property is being transferred to the transferee. Here, Respondent 2 became a member of the Society on the death of his father. He subscribed to the bye-laws. He accepted Section 30 of the Act and the other restrictions placed on a member. Respondent 2 was qualified to be a member in terms of the bye-laws. His father was also a member of the Society. The allotment of the property was made to Respondent 2 in his capacity as a member. There was really no transfer of property to Respondent 2. He inherited it with the limitations thereon placed by Section 31 of the Act and the bye-laws. His right to become a member depended on his possessing the qualification to become one as per the bye-laws of the Society. He possessed that qualification. The bye-laws provide that he should have the prior consent of the Society for transferring the property or his membership to a person qualified to be a member of the Society. These are restrictions in the interests of the Society and its members and consistent with the object with which the Society was formed. He cannot question that restriction. It is also not possible to say that such a restriction amounts to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act.

42. The restriction, if any, is a self-imposed restriction. It is a restriction in a compact to which the father of Respondent 2 was a party and to which Respondent 2 voluntarily became a party. It is difficult to postulate that such a qualified freedom to transfer a property accepted by a person voluntarily, would attract Section 10 of the Act. Moreover, it is not as if it is an absolute restraint on alienation. Respondent 2 has the right to transfer the property to a person who is qualified to be a member of the Society as per its bye-laws. At best, it is a partial restraint on alienation. Such partial restraints are valid if imposed in a family settlement, partition or compromise of disputed claims. This is clear from the decision of the Privy Council in Mohd. Raza v. Abbas Bandi Bibi [(1932) 59 IA 236 : AIR 1932 PC 158] and also from the decision of the Supreme Court in Gummanna Shetty v.

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NC: 2024:KHC:29383 AND 1 OTHER Nagaveniamma [(1967) 3 SCR 932 : AIR 1967 SC 1595] . So, when a person accepts membership in a cooperative society by submitting himself to its bye-laws and secures an allotment of a plot of land or a building in terms of the bye-laws and places on himself a qualified restriction in his right to transfer the property by stipulating that the same would be transferred back to the society or with the prior consent of the society to a person qualified to be a member of the society, it cannot be held to be an absolute restraint on alienation offending Section 10 of the Transfer of Property Act. He has placed that restriction on himself in the interests of the collective body, the society. He has voluntarily submerged his rights in that of the society.

44. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by Respondent 2 only in terms of the bye-laws of the Society and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its bye-laws. The direction given by the authority to the appellant to admit Respondent 3 as a member is set aside. Respondent 3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by Respondent 2 in disregard of the bye-laws of the Society and without the prior consent of the Society.

9.38. She also relies upon a decision in The Kerala Education Bill, 1957. vs Unknown6, more particularly paras 15, 19, 20, 21 and 41, which are reproduced hereunder for easy reference:

15. The true meaning, scope and effect of Art. 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of Chiranjit Lal Chowdhuri v. The Union of India and others ([1950] S.C.R. 869). In Budhan Choudhry v. The State of AIR 1958 SC 956 : 1958 INSC 64

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NC: 2024:KHC:29383 AND 1 OTHER Bihar a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that Article. Recently in the case of Ram Krishna Dalmia and others v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279), the position was reviewed at length by this Court by its judgment delivered on March 28, 1958, and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of Mohd. Hanif Quareshi v. The State of Bihar ([1959] S.C.R. 629), in the following words :-

"The meaning, scope and effect of Art. 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjit Lal Chowdhury v. The Union of India ([1950] S.C.R. 869) and ending with the recent case of Ram Krishna Dalmia v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279). It is now well-established that while Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the

burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may continue its restrictions to those cases where the need is deemed

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NC: 2024:KHC:29383 AND 1 OTHER to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In the judgment of this Court in Ram Krishna Dalmia's case ([1959] S.C.R. 279) the statutes that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion and, indeed, no attempt has been made in, that behalf by learned counsel. We, therefore, proceed to examine the impugned provisions in the light of the aforesaid principles enunciated by this Court.

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in Biswambar Singh v. The State of Orissa ([1954] S.C.R. 842, 855) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under clause 3(2) can be exercised only "for the purpose of providing facilities for general education, special education and for the training of teachers". It is "for the purpose of providing such facilities" that the

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NC: 2024:KHC:29383 AND 1 OTHER three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose. It is true that the word "may" has been used in sub-clause (3), but, according to the well known rule of construction of statutes, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the Government will be under an obligation to exercise its discretion in furtherance of such purpose and no question of the arbitrary exercise of discretion can arise. [Compare Julius v. Lord Bishop of Oxford ([1880] 5 app. Cas 214)]. If in actual fact any discrimination is made by the Government then such discrimination will be in violation of the policy and principle deducible from the said Bill itself and the court will then strike down not the provisions of the Bill but the discriminatory act of the Government. Passing on to clause 14, we find that the power conferred thereby on the Government is to be exercised only if it appears to the Government that the manager of any aided school has neglected to perform the duties imposed on him and that the exercise of the power is necessary in public interest. Here again the principle is indicated and no arbitrary or unguided power has been delegated to the Government. Likewise the power, under clause 15(1) can be exercised only if the Government is satisfied that it is necessary to exercise it for "standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing the education of any category under their direct control" and above all the exercise of the power is necessary "in the public interest". Whether the purposes are good or bad is a question of State policy with the merit of which we are not concerned in the present discussion. All that we are now endeavouring to point out is that the clause under consideration does lay down a policy for the

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NC: 2024:KHC:29383 AND 1 OTHER guidance of the Government in the matter of the exercise of the very wide power conferred on it by that clause. The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly - a proviso which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to clause 36. The power given to the Government by clause 36 to make rules is expressly stated to be exercised "for the purpose of carrying into effect the provisions of this Act". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under clause 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective. If no amendments are made the rules come into operation after the period of 14 days

expires. Even in this latter event the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. Learned counsel appearing for the State of Kerala submitted in picturesque language that here was what could be properly said to be legislation at two stages and the measure that will finally emerge consisting of the Bill and the rules with or without amendment will represent the voice of the Legislative Assembly itself and, therefore, it cannot be said that an unguided and uncontrolled power of legislation has been improperly delegated to the Government. Whether in approving the rules laid before it the Legislative Assembly acts as the Legislature of Kerala or acts as the delegate of the Legislature which consists of the Legislative Assembly and the Governor is, in the absence of the standing orders and rules of business of the Kerala Legislative Assembly, more than we can determine. But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including clause 36, the Kerala Legislature has, by clause 15 and clause 37 provided further safeguards. In this connection we must bear in

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NC: 2024:KHC:29383 AND 1 OTHER mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed. For reasons stated above it appears to us that the charge of unconstitutionality of the several clauses which come within the two questions now under consideration founded on Art. 14 cannot be sustained. The position is made even clearer when we consider the question of the validity of clause 15(1) for, apart from the policy and principle deducible from the long title and the preamble of the Bill and from that sub-clause itself, the proviso thereto clearly indicates that the Legislature has not abdicated its function and that while it has conferred on the Government a very wide power for the acquisition of categories of schools it has not only provided that such power can only be exercised for the specific purposes mentioned in the clause itself but has also kept a further and more effective control over the exercise of the power, by requiring that it is to be exercised only if a resolution is passed by the Legislative Assembly authorising the Government to do so. The Bill, in our opinion, comes not within category (iii) mentioned in Ram Krishna Dalmia's case ([1959] S.C.R. 279) as contended by Shri G. S. Pathak but within category

(iv) and if the Government applies the provisions in violation of the policy and principle laid down in the Bill the executive action will come under category (v) but not the Bill and that action will have to be struck down. The result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Art. 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative.

20. Re. Question 2 : Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Art. 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve

the same. It is obvious that a minority

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NC: 2024:KHC:29383 AND 1 OTHER community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

21. As soon as we reach Art. 30(1) learned counsel for the State of Kerala at once poses the question : what is a minority ? That is a term which is not defined in the Constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what ? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union ? The position taken up by the State of Kerala in its statement of case filed herein is as follows:-

"There is yet another aspect of the question that falls for consideration, namely, as to what is a minority under Art. 30(1). The State contends that Christians, a certain section of whom is vociferous in its objection to the Bill on the allegation that it offends Art. 30(1), are not in a minority in the State. It is no doubt true that Christians are not a mathematical majority in the whole State. They constitute about one-fourth of the population; but it does not follow therefrom that they form a minority within the meaning of Art. 30(1). The argument that they do, if pushed to its logical conclusion, would mean that any section of the people forming under fifty per cent. of the population should be classified as a minority and be dealt with as such.

Christians form the second largest community in Kerala State; they form, however, a majority community in certain area of the State. Muslims form the third largest community in the State, about one- seventh of the total population. They also, however, form the majority community in certain other areas of the State. (In I.L.R. (1951) 3 Assam 384, it was held

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NC: 2024:KHC:29383 AND 1 OTHER that persons who are alleged to be a minority must be a minority in the particular region in which the institution involved is situated)."'

The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Art. 29(1) and 30(1) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. A little reflection will at once show that this is not a satisfactory test. Where is the line to be drawn and which is the unit which will have to be taken ? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards ? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality. Thus Anglo-Indians or Christians or Muslims may congregate in one particular suburb of a town or one particular ward of a municipality and they may be in a majority there. According to the argument of learned counsel for the State of Kerala the Anglo-Indians or Christians or Muslims of that locality, taken as a unit, will not be a "minority" within the meaning of the Articles under consideration and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo-Indian or Christian community happen to reside in another suburb of the same town or another ward of the same municipality and their number be less than that of the members of other communities residing there, then those members of the Anglo-Indian or Christian community will be a minority within the meaning of Arts. 29 and 30 and will be entitled to establish and maintain educational institutions of their choice in that locality. Likewise the Tamilians residing in Karolbagh, if they happen to be larger in number than the members of other communities residing in Karolbagh, will not be entitled to establish and maintain a Tamilian school in Karolbagh, whereas the Tamilians residing in, say, Daryaganj where they may be less numerous than the members of other communities residing in Daryaganj will be a minority or section within the meaning of Arts. 29 and 30. Again Bihari labourers residing in the industrial areas in or near Calcutta where they may be the majority in that locality will not be entitled to have the minority rights and those Biharis will have no

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NC: 2024:KHC:29383 AND 1 OTHER educational institution of their choice imparting education in Hindi, although they are numerically a minority if we take the entire city of Calcutta or the State of West Bengal as a unit. Likewise Bengalis residing in a particular ward in a town in Bihar where they may form the majority will not be entitled to conserve their language, script or culture by imparting education in Bengali. These are, no doubt, extreme illustrations, but they serve to bring out the fallacy inherent in the argument on this part of the case advanced by learned counsel for the State of Kerala. Reference has been made to Art. 350A in support of the argument that a local authority may be taken as a unit. The illustration given above will apply to that case also. Further such a construction will necessitate the addition of the words "within their jurisdiction" after the words "minority groups". The last sentence of that Article also appears to run counter to such argument. We need not, however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to

the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo- Indians will certainly be minorities in the State of Kerala. It is admitted that out of the total population of 1,42,00,000 in Kerala there are only 34,00,000 Christians and 25,00,000 Muslims. The Anglo-Indians in the State of Travancore-Cochin before the re- organisation of the States numbered only 11,990 according to the 1951 Census. We may also emphasise that question 2 itself proceeds on the footing that there are minorities in Kerala who are entitled to the rights conferred by Art. 30(1) and, strictly speaking, for answering question 2 we need not enquire as to

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NC: 2024:KHC:29383 AND 1 OTHER what a minority community means or how it is to be ascertained.

41. But then, it was argued that the policy behind Art. 30(1) was to enable minorities to establish and maintain their own institutions, and that that policy would be defeated if the State is not laid under an obligation to accord recognition to them. Let us assume that the question of policy can be gone into, apart from the language of the enactment. But what is the policy behind Art. 30(1) ? As I conceive it, it is that it should not be in the power of the majority in a State to destroy or to impair the rights of the minorities, religious or linguistic. That is a policy which permeates all modern Constitutions, and its purpose is to encourage individuals to preserve and develop their own distinct culture. It is well- known that during the Middle Ages the accepted notion was that Sovereigns were entitled to impose their own religion on their subjects, and those who did not conform to it could be dealt with as traitors. It was this notion that was responsible during the 16th and 17th Centuries for numerous wars between nations and for civil wars in the Continent of Europe, and it was only latterly that it came to be recognised that freedom of religion is not incompatible with good citizenship and loyalty to the State, and that all progressive societies must respect the religious beliefs of their minorities. It is this concept that is embodied in Arts. 25, 26, 29 and 30. Article 25 guarantees to persons the right to freely profess, practice and propagate religion. Article 26 recognises the right of religious denominations to establish and maintain religious and charitable institutions. Article 29(1) protects the rights of sections of citizens to have their own distinct language, script or culture. Article 30(1) belongs to the same category as Arts. 25, 26 and 29, and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minorities should have the right to live, and

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NC: 2024:KHC:29383 AND 1 OTHER should be allowed by the State to live, their own cultural life as regards religion or language. That is the true scope of the right conferred under Art. 30(1), and the obligation of the State in relation thereto is purely negative. It cannot prohibit the establishment of such institutions, and it should not interfere with the administration of such institutions by the

minorities. That right is not, as I have already pointed out, infringed by Clause (20). The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Art. 30(1). The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the State various obligations in relation to the minorities apart from what is involved in Art. 30(1). Thus, Art. 30(2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up :

- (1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities, religious or linguistic.
- (2) The State is under a negative obligation as regards those institutions, not to prohibit their

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NC: 2024:KHC:29383 AND 1 OTHER establishment or to interfere with their administration.

Clause (20) of the Bill violates neither of these two obligations. On the other hand, it is the contention of the minorities that must, if accepted, result in discrimination by the State. While recognised institutions of the majority communities will be subject to clause (20), similar institutions of minority communities falling within Art. 30(1) will not be subject to it. The former cannot collect fees, while the latter can. This surely is discrimination. It may be stated that learned counsel for the minorities, when pressed with the question that on their contention Art. 45 must become a dead letter, answered that the situation could be met by the State paying compensation to the minority institutions to make up for the loss of fees. That serves clearly to reveal that what the minorities fight for is what has not been granted to them under Art. 30(2) of the Constitution, viz., aid to them on the ground of religion or language. In my opinion, there is no justification for putting on Art. 30(1) a construction which would put the minorities in a more favoured position than the majority communities.

9.39. By relying on the above she submits that any action of the State cannot negate the customary law/practice of a citizen and in this case, the customs and traditions practised by the Kodava people.

9.40. She relies upon the decision of the Apex Court in Sardar Syedna Taher Saifuddin Saheb

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NC: 2024:KHC:29383 AND 1 OTHER vs. State of Bombay⁷, more particularly para 59 and 62 and submits Article 25 of the Constitution gives every person a right to achieve his purpose, practice and propagate religion, as such the Kodava race is also required to freely practice the civil and religious usages even if such practice is contrary to the law. Paras 59 & 62 are reproduced hereunder for easy reference:

59. It is admitted, however, in the present case that the Dai as the head of the denomination has vested in him the power, subject to the procedural requirements indicated in the judgment of the Privy Council, to excommunicate such of the members of the community as do not adhere to the basic essentials of the faith and in particular those who repudiate him as the head of the denomination and as a medium through which the community derives spiritual satisfaction or efficiency immediately from the God-head. It might be that if the enactment had confined itself to dealing with excommunication as a punishment for secular offences merely and not as an instrument for the self preservation of a religious denomination the position would have been different and in such an event the question as to whether Articles 25 and 26 would be sufficient to render such legislation unconstitutional might require serious consideration. That is not the position here. The Act is not confined in its AIR 1962 SC 853

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NC: 2024:KHC:29383 AND 1 OTHER operation to the eventualities just now mentioned but even excommunication with a view to the preservation of the identity of the community and to prevent what might be a schism in the denomination is also brought within the mischief of the enactment. It is not possible, in the definition of excommunication which the Act carries, to read down the Act so as to confine excommunication as a punishment of offences which are unrelated to the practice of the religion which do not touch and concern the very existence of the faith of the denomination as such. Such an exclusion cannot be achieved except by rewriting the section.

62. Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his administration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25(1) and rendering the protection illusory.

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NC: 2024:KHC:29383 AND 1 OTHER 9.41. She refers to the decision in DAV College Jalandhar vs. State of Punjab⁸, more particularly para 9, 10 and 18 which are reproduced hereunder for easy reference:

9. Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities have to be determined in relation to the population of the State. On this aspect Das, C.J., in Kerala Education Bill case speaking for the majority thought that there was a fallacy in the suggestion that a minority or section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically, minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject-matter of Item 11 of the State list, subject only to the provisions of Entries 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and AIR 1971 SC 1737 : 1971 INSC 142

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NC: 2024:KHC:29383 AND 1 OTHER consequently the minority must be determined by reference to the entire population of that State.

10. It is undisputed, and it was also conceded by the State of Punjab, that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was however contested. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that that language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1).

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha -- in Hindi language and Devnagri character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi or Sanskrit. The belief is that the name of the script

Devnagri is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

9.42. She refers to the decision in Virendra Nath Gupta and others vs Delhi Administration

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NC: 2024:KHC:29383 AND 1 OTHER and others⁹, more particularly para 7, which is reproduced hereunder for easy reference:

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers 1990 SCC (L&S)

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NC: 2024:KHC:29383 AND 1 OTHER with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See In re the Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] ; Ahmedabad St. Xavers College Society v. State of Gujarat [(1974) 1 SCC 717 : (1975) 1 SCR 173] ; Lilly Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134 : (1979) 1 SCR 820] ; Frank Anthony Public School Employees' Association v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35] ; Y. Theclamma v.

Union of India [(1987) 2 SCC 516] ; All Bihar Christian Schools Association v. State of Bihar [(1988) 1 SCC 206] . Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

9.43. She refers to the decision in Jagdev Singh Sidhanti v. Pratap Singh Daulta¹⁰ , more particularly para 26 thereof, which is reproduced hereunder for easy reference:

AIR 1965 SC 183 : 1964 INSC 33

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NC: 2024:KHC:29383 AND 1 OTHER

26. It is in the light of these principles, the correctness of the findings of the High Court that Sidhanti was guilty of the corrupt practice of appealing for votes on the ground of his language and of asking the voters to refrain from voting for Daulta on the ground of the language of Daulta may be examined. The petition filed by Daulta on this part of the case was vague. In para 11 of his petition it was averred that Sidhanti and his agents made a systematic appeal to the audience to vote for Sidhanti and refrain from voting for Daulta "on the ground of religion and language", and in para -12 it was averred that in the public meetings held to further the prospects of Sidhanti in the election, Sidhanti and his agents had made systematic appeals to the electorate to vote for him and refrain from voting for Daulta "on the ground of his religion and language". A bare perusal of the particulars of the corrupt practice so set out in paras 11 and 12 are to be found in Schedules. 'C' and 'D' clearly shows that it was the case of Daulta that Sidhanti had said that if the electorate wanted to protect their language they should vote for the Haryana Lok Samiti candidate.

Similar exhortations are said to have been made by the other speakers at the various meetings. It is stated in Schedule 'D' that resolutions were passed at the meetings urging upon the Government to "abolish Punjabi from Haryana", that many speakers said that the Haryana Lok Samiti will fight for Hindi for Haryana and that they were opposed to the teaching of Punjabi in Haryana. These exhortations to the electorate to induce the Government to change their language policy or that a political party will agitate for the protection of the language spoken by the residents of the Haryana area do not fall within the corrupt practices of appealing for votes on the ground of language of the candidate or to refrain from voting on the ground of language of the contesting candidate.

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NC: 2024:KHC:29383 AND 1 OTHER 9.44. By relying on the above Judgments, she submits that the fundamental duties not only apply to the citizens but also to the State inasmuch as in terms of Article 51-A(f), there is a duty cast on the state to preserve the rich heritage of composite culture. The State by way of impugned amendment has done away with the culture of Kodavas thereby violating Article 51-A(f), which is reproduced hereunder for easy reference:

51-A. Fundamental duties -

(f): to value and preserve the rich heritage of our composite culture;

9.45. She submits that the claim of the State that Jamma Bane lands are government lands are completely false inasmuch as the Bane lands of Coorg were never the properties of the British government nor of the Rajas. The Banes continued to be under private ownership of the

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NC: 2024:KHC:29383 AND 1 OTHER joint family, the British, never being the owner, had not handed over the bane land to the Indian government after the independence. The government lands under the CLRR were called paisari land. Jamma Bane land having a distinct name, not being a paisari land, is not a government land. Under Article 294(b) there is an obligation on the State to preserve the customs and traditions of the Kodavas which is reproduced hereunder for easy reference:

294(b): all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, 9.46. By referring to Section 6 of the Karnataka General Clauses Act, 1899, she submits that repeal of any enactment will not affect any rights, privileges or obligations acquired, accrued or incurred under any enactment so

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NC: 2024:KHC:29383 AND 1 OTHER repealed. Thus, she submits that the repeal of CLRR will not take away the rights invested with the Kodavas. Section 6 of the Karnataka General Clauses Act, 1899 is reproduced hereunder for easy reference:

6. Effect of repeal.- Where this Act or 1 [any Mysore Act or Karnataka Act]1 made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,-

(a) revive anything not in force or existing at the time at which the repel takes effect;
or

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactments so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such, right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

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NC: 2024:KHC:29383 AND 1 OTHER 9.47. She submits that customary law continues to be administered even after the Constitution came into being. In this regard, she refers to a decision in S.N. Rama Shetty & others vs. Kongera T. Appanna¹¹, pages 222 and 223, which are reproduced hereunder for easy reference "Whatever might be the quantity of timber and fire-wood cut by the defendant, it is urged that it was the property of Government and not that of the plaintiff and that therefore the defendant is not liable for damages to the plaintiff. This argument is founded on the character of the holding of what is known as 'bane' land in Coorg. In Appendix 3 'Definitions' given in the Coorg Revenue Manual, 'bane' is described as 'forest land granted for the service of the holding of wet land to which it is allotted, to be, held free of revenue by the cultivator for grazing, and to supply leaf manure, firewood and timber required for the agricultural and domestic purposes of the cultivator, so long as he continues in possession of the wet land.' Such bane may be attached to wet land held under jama tenure, umbli tenure or sagu tenure. The lands held in jama or umbli tenure are not fully assessed and are not alienable while land held under sagu tenure is alienable. Since the bane is granted only for the purpose of making limited use of the forest produce and the holder has no right to cut and remove the timber out of 1959 Mys.LJ 218

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NC: 2024:KHC:29383 AND 1 OTHER the bane land or for purposes other than for the service of the main holding, it is urged that the timber is the property of Government. The Coorg Land and Revenue Regulation 1899 does not define any of the tenures mentioned above and the definition referred to above is not, strictly speaking, a statutory definition. There is nothing in the above Regulation to alter or affect the character of any of the above tenures. We have therefore to see what the character of a bane tenure is as understood by customary law and practice. In Baden-Powell's book on Land Systems in British India, it is stated as follows:-

"The bane.....is destined to supply the warg-holder with grazing, timber, firewood, and herbage which he burns on the rice-fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural and domestic wants of the holder; and if timber, etc., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood..... In the jamma tenure, as the bane is included in the sanad, it is virtually a part of the property. In the sagu tenure, there is no sanad but the attached area of bane must be held and used subject to the same conditions. Under these circumstances, the bane cannot be regarded as actually the property of the tenure holder, nor, on the other hand, as land at the disposal of Government. It is which is held as an appendage to a warg or estate, or to a sagu holding, in a sort of trust, or on condition for a certain use".

In the Note by Sir J. B. Lyall on Tenures in Coorg, printed as Appendix IV in the Coorg Revenue Manual, there is nothing to indicate any difference from what is stated above in regard to the character of a bane holding. It would therefore

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NC: 2024:KHC:29383 AND 1 OTHER appear that bane land held in association with privileged, warg holding like jamma and umbli land is in the possession and dominion of the holders and that though they have no right to cut the timber and dispose it of for purposes other than for the service of the main holding they can do so subject to payment of seignorage and that there is no absolute prohibition to their cutting the timber. In fact, the rules framed in regard to this matter both under the Coorg Land and Revenue Regulation and the Forest Regulation provide for the cutting of the timber by the holder on payment of seignorage for the 'redemption' of the timber and they do not contemplate Government permitting any one other than the holder to cut or remove timber. The seignorage itself represents not the full value of the timber, but a part of the value fixed from time to time presumably with reference to the prevailing rates at the time of the promulgation of the rules. It is also significant to note that in the rules promulgated in 1953, provision is made for extraction and disposal of timber through Government agency and that the holder is entitled to 50 per cent of the net proceeds. The nature of the tenure and the above rules appear to indicate that the holder has at least dominion over the timber and whatever his accountability to Government may be, any third party who interferes with the bane land is accountable to the holder. Therefore, the defendant's contention on this matter has no force.

As regards the rates, the learned Judge has adopted the rates given in the plaint since the rates fetched at the sales held by the Forest Department at Hunsur on 18-2-48 were higher than the rates mentioned in the plaint. The defendant has examined some witnesses to speak to the rates but their evidence is of little value. D. W. 2 Basaviah says that one Baliah has filed a suit against him claiming Rs. 2-4-0 per cubic foot of honne timber. He says nandi was sold at Re. 1 and

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NC: 2024:KHC:29383 AND 1 OTHER rose-wood at Rs. 2-4-0 per cubic foot. He has not maintained any accounts. D. W. 3 Anniah who is in the timber trade speaks about timber sales, a statement of which is contained in a letter dated 23-6-49 (Ex. B-7) addressed to him by the proprietors of Gowri Shankar Mills, Hassan, to whom he says he had supplied timber. Neither his account books nor his customers' account books are produced. The rates in the letter can hardly be taken into consideration as evidence. D.W. 4 Subbaraya Setty speaks to the rates as mentioned in Ex. B-4 which purports to be a statement of account sent by him to the defendant. It is dated 25-1-49. It no doubt mentions the rates at which different varieties of timber were sold. But this witness has not produced his accounts and the rates mentioned in the statement of account contained in the letter can hardly be regarded as evidence. He has also produced Ex. B-8, a communication dated 28-2-48 from the Chief Forest Officer, Coorg. Amongst the varieties of timber mentioned in it, the only relevant variety for which the rate is given is Biti and the rate is Rs. 2-3-0. But the dimensions of the logs are not given. Apart from the evidentiary value to be attached to a communication like this, it is difficult to take the rate into consideration in the absence of details regarding the dimensions of the logs, for the rate would depend on them also. Thus we are left with the rates fetched in the Forest Departmental sale. There is no reason to dispute their correctness or authenticity". 9.48. She relies on a decision in C.A. Nanjappa vs. C.M. Thimmaya¹², more particularly pages 1963 Mys.LJ 486

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NC: 2024:KHC:29383 AND 1 OTHER 487-489 which are reproduced hereunder for easy reference:

"The short point for consideration in this appeal is whether the finding of the learned District Judge that the suit filed by the appellants in a Civil Court is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation, is correct. It is idle for the appellants to contend that the suit is one for readjustment or reallocation of the maintenance provision among the members of the Coorg family and not for a partition of the properties. The parties are Coorgis. They are governed by Mithakshara School of Hindu Law as modified by the Coorg Customary Law. The suit as brought now is clearly one for partition of the suit schedule properties which are admittedly joint family properties. It is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation. The contention of the appellants that the suit as brought by them is not a suit for partition as contended by the respondents but is only a suit for readjustment of the maintenance division effected on 10-10-1923 is an after-thought. We are unable to accept the contention of the learned Counsel for the appellants that once the trial Court allowed the amendment prayed for by the appellants and permitted them to delete the word 'Partition' in paragraph (7) of the plaint and to add the fresh allegations to the effect that the suit is only for increased maintenance, the suit cannot be considered to be one for fresh partition. There is no substance in the said contention. The allegations made by the appellants in the plaint make it abundantly clear that the suit is one for readjustment or reallocation of the properties allotted to the two branches under the deed dated 10-10-1923. Even on the basis that the suit is one for readjustment of the properties the suit is not maintainable. S. 145 of the Coorg Land and Revenue Regulation unmistakably ousts

the jurisdiction of the Civil Courts to entertain such suits. In para 160 of his book "A Manual of Coorg Civil Law" Major General Rob. Cole, Superintendent of Coorg dealing with the question whether a partition of the joint family proper-ties amongst the members of the Coorg family could be effected has stated:

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NC: 2024:KHC:29383 AND 1 OTHER "Partition not allowed-It was not customary among Coorgs to acquire or hold land, houses, &c., separately. Since about 1805 however some families quarrelled and appealed to the former Rajas, who directed that they should in accordance with the Hindu Law be allowed to divide. Subsequent to our assumption of the Government of the country several other families have similarly applied to the Courts and obtained decrees for partition; whilst others have divided off amicably amongst themselves. In 1858 the Thakkas and headmen of the Coorgs represented the loss and ruin occasioned to their ancient houses by this innovation and system of partition; and the Judicial Commissioner in additional Spl. A. S. No. 117 of 1958-59 passed a decree declaring that division was contrary to the ancient custom of Coorg and ever since division has been strictly inter directed."

The learned Counsel for the appellants is not able to point out to us any decision of any Court which has taken a contrary view. S. 145 of the Coorg Land and Revenue Regulation prohibits division of the joint family properties amongst the members of the Coorg family whether it be a partition or other allotment amongst the members of the family. According to the section a suit for allotment of the joint family properties even for purposes of maintenance is excluded from the jurisdiction of a Civil Court. S. 145 of the Coorg Land and Revenue Regulation in so far as it relates for our purpose reads thus:

"145. Bar of suits in certain matters-Except as otherwise pro- vided by this Regulation no suit shall be brought in any Civil Court, in respect of any of the following matters, namely.....

(xv) any claim for the partition of an estate or holding or any question as to the allotment of land when such estate holding or land is one of which the land-

revenue has been wholly or partly assigned or released or which is held as joint family property by persons of the Coorg race or any claim for the distribution of land revenue on partition or any other question connected therewith not being a question as to the partibility of, or the title to, the property of which partition is sought;....."

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NC: 2024:KHC:29383 AND 1 OTHER The above provision is quite clear. It is idle for the appellants to contend that in spite of such a clear provision the jurisdiction of a Civil Court to deal with the allotment of the joint family properties of a Coorg family is within the jurisdiction of a Civil Court.

The learned District Judge, is, therefore, justified in holding that the suit filed by the appellants was not maintainable and dismissing the same."

9.49. Relying on the above judgements she submits that the lands granted by the King under the Jamma Tenure system became the property of the house/family and not of the individual, and any grant made by the King is to be enjoyed by all members of the family. It is the family name that is entered in the SYST records as an abstract owner. In the said records the name of Patedara of the family who is managing the affairs of the family is entered into. The names of all other family members, i.e. maintenance division members, are entered in the 6th column of the Jamma Bandi. Upon computerization, the family name is shown at the head of the list in the 9th column, followed by the name of

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NC: 2024:KHC:29383 AND 1 OTHER Patedara and thereafter, maintenance division holders, and now, after the impugned amendment, a partition deed with a revenue sketch is insisted for entry of the name of any maintenance division holder.

9.50. A Sannad was granted for every holding which would also include a Jamma Bane which was held at half the ordinary assessment by the eldest member of the family.

9.51. By referring to G. Richter's Gazetteer of Coorg, page 252, she submits that since Coorg had no standing army, the Kodavas who rendered military service were not paid any salary whilst on active duty, instead Kodavas were allowed to make use of Jamma Bane land at half assessment. The said extract is hereunder reproduced for easy reference:

"As the Coorg force was not a standing army, it received no pay. Whilst on active duty as

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NC: 2024:KHC:29383 AND 1 OTHER guards or during warfare, the soldiers were maintained at the public expense, and being remarkable for their predatory habits, they largely shared with the Rájahs in the spoil. Without discipline and organization, the Coorgs displayed their strength chiefly behind their stockades and Cadangas. In the open field they rarely faced the attacks of regular troops."

9.52. She submits that the issue in question in Cheekkere's case was as regards the entitlement of the government to the mines and minerals in the subsoil of Bane land. There is no distinction made between the Jamma Bane land or other Bane lands. However, this court singled out Jamma Bane land and held Jamma Bane land to be government land, which is not correct. As aforesaid, she submits that Jamma Bane land was never government land. She further submits that Cheekkere Poovaiah's decision (*supra*) would not apply to the present case since that was one relating to the sub-soil rights, more particularly relating to

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NC: 2024:KHC:29383 AND 1 OTHER minerals in the sub-soil, which vests with the government. If there are no minerals in the land and the land is used for agricultural activities and or customary religious practices of Kodavas, the State cannot have any right on such a land. Thus, even if the decision in Cheekere Poovaiah's case is accepted to be correct, she submits that the decision would only apply in regard to mineral rights in the sub-soil and not as regards rights of ownership by the entire family in Jamma Bane land. 9.53. She refers to the decision in the case of Threesiamma Jacob & others -v- Geologist Department of Mining & Geology & others¹³, more particularly paras 51, 54, 55 and 57 thereof which are reproduced hereunder for easy reference:

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NC: 2024:KHC:29383 AND 1 OTHER

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium).

Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals - the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as

Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively²⁶ providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines

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NC: 2024:KHC:29383 AND 1 OTHER stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5²⁷ for prohibition or regulation of mining activity in such mineral. Under Section 10²⁸ of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.

9.54. She submits that even after the KLR Act and Rules substituted the CLRR, the rights created under CLRR could not be taken away. Section 202 of the Repeal and Savings clauses of KLR saves all rights, privileges, obligations and liability accrued or incurred, this aspect has not

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NC: 2024:KHC:29383 AND 1 OTHER been considered in Cheekere Poovaiah's case, and there is a mistake committed by treating unalienated Jamma Bane land as government lands or government grants which is not. She submits that Cheekere Poovaiah's case is per incuriam passed in ignorancia and subsilentio arrived at a conclusion. 9.55. On the basis of the above, she submits that the above writ petitions are required to be allowed and the reliefs sought for granted.

10. Sri. Vikram Huilgol, learned Additional Advocate General submits that, 10.1. By referring to the statement of objections, and the Amended Act, he submits that the amendment was enacted with a view to confer certain rights including the assessment of Bane lands in the Coorg district.

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NC: 2024:KHC:29383 AND 1 OTHER 10.2. His submission is that by way of the amendment, certain rights have been conferred on the Kodavas, the amendment is a beneficial legislation which seeks to confer proprietary rights on landholders of Bane land in Kodagu/Coorg. By way of amendment, the persons in possession of Bane land will be registered as 'Occupants' entitling them to full ownership of the said land, bringing about uniformity in the State's land revenue system. 10.3. The State, being of the opinion that the Kodavas were deprived of their full ownership of Jamma Bane land, has sought to confer such full ownership, there are no rights which are being taken away by the State in respect of the said lands and on this basis he submits that no Kodava can be aggrieved by the rights which have been conferred under the Amended Act, and it is for this reason that in the last decade

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NC: 2024:KHC:29383 AND 1 OTHER or so only a few persons like the Petitioners have challenged the amendment, in terms of Sub-section (20) of Section 2 of the KLR Act 10.4. Jamma tenure is originally granted towards military service or semi-military service; under the said tenure, the land was held on payment of half assessment and as a consideration for which military service was required to be rendered to the ruler as and when demanded. Such tenure was in respect of wetlands known as warg measuring 1.5 acres each in which rice was cultivated and the adjoining bane which was forest land considered necessary for grazing, leaf manure, firewood, and timber for agricultural purposes.

10.5. Bane land under the Jamma tenure was free from assessment for upto 10 acres known as 'Privileged Bane', while in respect of wet lands

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NC: 2024:KHC:29383 AND 1 OTHER adjoining the Bane, the tenure holder was to pay half of the assessment. It is in that background, due to there being no requirement to make payment of assessment, Jamma tenure was considered to be a privileged tenure.

10.6. His submission is that there was no restriction as such for alienation, many of the Kodava families had obtained decrees of partition from the then Raja and or the Courts, effected partition and thereafter proceeded to sell their individual extent of land.

10.7. By referring to the publication Religion and Society Among by the Coorg -South India by M.N. Srenivas 1952 edition, he submits that if all adult members of the lineage consented to alienation, the Patedara of the family was required to make an application

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NC: 2024:KHC:29383 AND 1 OTHER before the Revenue Authorities seeking permission to alienate the land, the seller had to pay 5% of the market value of the property as Nazarana to the State which subsequently was enhanced to 20%.

10.8. The land once transferred/alienated, the Jamma property was treated as sagu property and amenable for regular assessment. This practice having been followed, he once again reiterates that there was no prohibition for sale of Jamma Bane land. He also refers to Rules 164-167 of the CLRR and submits that the rules permitted to alienate Jamma Bane land. Rule 164 and 167 reads as under:

164. Jama, Umbli, Bhatamanya and Jaghir lands.- (1) The Assistant Commissioner may permit the alienation of jama, jama umbli, bhatamanya and jaghir lands [also sale, gift, mortgage or release of maintenance shares of such lands in a family patta other than bhatamanya lands in favour of the members of the same family] in the following circumstances, without reference to the Chief Commissioner.-

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NC: 2024:KHC:29383 AND 1 OTHER

(a) Subletting of wet land for not more than 15 years, with a proportionate part of the attached bane, if desired;

(b) Mortgage as security for loans advanced by Government under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, as amended by Coorg Act III of 1936;

(c) Mortgage as security for loans advanced by Co-operative Credit Societies for purposes for which loans might have been made under those Acts;

(d) Exchange for lands held on privileged tenure or on full assessment on condition that the transaction is to the mutual advantage of the party or parties concerned, the lands exchanged are approximately equal in value and the transfer is ratified by the performance of the ghatti ceremony. In such case, the tenure will change with the ownership;

(e) Hypothecation for not more than 15 years, of future crops. The mortgagee may be required to give security for the payment of revenue during the currency of the mortgage. (No permission is required for the hypothecation of standing crops);

(f) The permanent alienation of bhatamanya lands to a Brahmin;

(g) Sale, gift, mortgage or release of maintenance shares of jama, umbli or jaghir lands in a family patta in favour of the members of the same family, provided that all the adult male members in the family and where there are minors, the guardians, agree to the transaction. (2) If such land is leased without the permission of the Assistant Commissioner, he shall refer the case to the Chief Commissioner for orders. The Chief Commissioner may either..-

(a) Resume the land and, if he thinks fit, regrant it to the occupier on sagu tenure;

(b) Charge sagu rate for the term of the lease, in which case the privileged rate shall ordinarily be revived on termination of the lease; or

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NC: 2024:KHC:29383 AND 1 OTHER

(c) If the circumstances are unobjectionable, give sanction to the lease, the privileged rate being maintained. (3) If the Chief Commissioner resumes land and regrants it to the occupier under clause (2)(a) above, he may, before the regrant is made, recover land and timber-value under the ordinary provisions of the rules, or a proportion of such value as he thinks reasonable. (4) Lands held on waram tenure (i.e., sublet for short periods on terms of a division of crop between landholder and tenant) will not be deemed to be alienated within the meaning of Section 45 of the Coorg Land and Revenue Regulation.

167. [Privileged wet, bane or hithlu lands. (1) The alienator of privileged wet, ban thithlands shall at the Governments Nazarana, a sum equal to twenty per cent of the market value of the land alienated.] (2) Jaghir banes and hitlus may be cultivated free of assessment without limit, and without the permission of the Assistant Commissioner.

(3) On the hitlus of Yedavanad specified in the Raja's sist accounts, and not alienated by their original grantees or their representatives, cultivation of not more than 10 acres is allowed free of assessment: Provided that the land so cultivated shall be in a compact block. (4) In other respects the provisions of Rules 136 and 139 apply to privileged banes and hitlus. 10.9. His submission is that amendment was introduced taking into account the change in the societal conditions, including the factors such as breakdown of joint family system, mobility of the citizens, disbursal of members

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NC: 2024:KHC:29383 AND 1 OTHER from ancestral land, diverse economic pursuits of the members of the family, employment and or business interests outside the district of Coorg, etc.

10.10. By referring to the Cheekere Poovaiah's case, he submits that the Full Bench of this Court held that both holders of privileged and unprivileged Jamma Bane lands are not full owners but have limited rights, the land belonging to the government. Once Jamma Bane lands are alienated, the holders of such lands are entitled to all rights and are subject to liability of full ownership including full assessment of the land. He submits that the full Bench has recognized the alienation of Jamma Bane land as common place and as such, the consequences of alienation over rights and liabilities of Jamma Bane land have been categorically laid down in the said decision.

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NC: 2024:KHC:29383 AND 1 OTHER 10.11. On account of the Full Bench imposing certain restrictions on holders of Jamma Bane land, the State has now by amending Subsection (20) of Section 2, done away with such restrictions, introduced a system of registering the holder of Jamma

Bane land as an occupant and thereby conferring full ownership on the said holder without alienation, thus by virtue of the amendment, all holders/occupants of alienated or unalienated as well as unprivileged bane lands including Jamma Bane land, are placed at par. On such registration as an occupant, even the government cannot claim any ownership in the said land and the said land would exclusively belong to the registered owner. He refers to the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Rakesh Kohli¹⁴, more particularly para nos. (2012) 3 SCC 481

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NC: 2024:KHC:29383 AND 1 OTHER 15, 16, 17, 18, and 19 thereof which are reproduced hereunder for easy reference:

15. In our opinion, the High Court was clearly in error in declaring clause (d), Article 45 of Schedule I-A of the 1899 Act which was brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonableness and irrationality.

The High Court failed to keep in mind the well- defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature.

16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. [(1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38) "43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and

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NC: 2024:KHC:29383 AND 1 OTHER two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of

the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

18. Then dealing with the decision of this Court in State of T.N. v. Ananthi Ammal [(1995) 1 SCC 519], a three-Judge Bench in McDowell and Co. [(1996) 3 SCC 709] observed in paras 43 and 44 of the Report as under: (McDowell and Co. case [(1996) 3 SCC 709], SCC p. 739) "43. ... Now, coming to the decision in Ananthi Ammal [(1995) 1 SCC 519], we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation

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NC: 2024:KHC:29383 AND 1 OTHER in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7) '7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.'

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

19. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such

enactment could not have been struck down on the ground that it was arbitrary or irrational.

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NC: 2024:KHC:29383 AND 1 OTHER 10.12. Relying on the above, he submits that a statute enacted by the Central Parliament or State legislature cannot be declared unconstitutional unless there is a flagrant violation of the provisions.

10.13. He relies on the decision of the Hon'ble Apex Court in Ashoka Kumar Thakur v. Union of India¹⁵, more particularly para 219, which is produced hereunder for easy reference:

219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground.

The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India [(1977) 3 SCC 592] said : (SCC p. 660, para 149) (2008) 6 SCC 1 : 2008 INSC 473

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NC: 2024:KHC:29383 AND 1 OTHER "149. ... if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities." Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected.

10.14. By relying on the above, he submits that a law passed by the legislature can only be challenged on constitutionally recognized and available grounds. Customs, traditions, and unreasonableness are not grounds for such a challenge.

10.15. He refers to the decision of the Hon'ble Apex Court in Binoy Viswam v. Union of India¹⁶, more particularly para 83 thereof, which is reproduced hereunder for easy reference:

83. It is, thus, clear that in exercise of power of judicial review, the Indian courts are invested with powers to strike down primary legislation enacted by Parliament or the State Legislatures. However, while undertaking this exercise of judicial review, the same is to be done at three levels. In the first stage, the Court would examine as to whether (2017) 7 SCC 59 : 2017:INSC:478

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NC: 2024:KHC:29383 AND 1 OTHER impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions (substantive judicial review) or it falls foul of the federal distribution of powers (procedural judicial review). If it is not found to be so, no further exercise is needed as challenge would fail. On the other hand, if it is found that legislature lacks competence as the subject legislated was not within the powers assigned in the List in Schedule VII, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution. However, while undertaking substantive judicial review, if it is found that the impugned provision appears to be violative of fundamental rights or other constitutional rights, the Court reaches the second stage of review. At this second phase of enquiry, the Court is supposed to undertake the exercise as to whether the impugned provision can still be saved by reading it down so as to bring it in conformity with the constitutional provisions. If that is not achievable then the enquiry enters the third stage. If the offending portion of the statute is severable, it is severed and the Court strikes down the impugned provision declaring the same as unconstitutional.

10.16. By relying on Binoy Viswam's case he submits that judicial review would require the court to first examine whether the legislation is compatible with the fundamental rights as enshrined in the Constitution or falls foul thereof. If it is not found to be so, no further exercise is to be done. The only other aspect

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NC: 2024:KHC:29383 AND 1 OTHER that could be checked is whether the legislature lacks competence on the subject matter or not. 10.17. In the present case, there is no violation of any fundamental right, nor can it be said that the State legislature lacks competence. Therefore, the challenge made is not sustainable. 10.18. He relies upon the decision of the Hon'ble Apex Court in Jaya Thakur v. Union of India¹⁷, more particularly para 66 and 74, which is reproduced hereunder for easy reference:

66. For considering the issue with regard to validity of the amendments, it will be apposite to refer to some of the judgments of this Court delineating the scope of the judicial review in examining the legislative functions of the legislature.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental

rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while 2023 INSC 606

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NC: 2024:KHC:29383 AND 1 OTHER doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

10.19. Insofar as customs and traditions are concerned, his submission is that the same cannot be a ground to challenge the statute duly enacted by a competent legislature. The legislature has the authority to modify or abolish customs by validly enacting laws. As an example, he submits that there are various customs which are not acceptable in society today, which have also been criminalized, like payment of dowry, child marriage, female infanticide, etc. He relies on the decision in N. Adithayan v. Travancore Devaswom Board¹⁸ reported in para 9 thereof which is reproduced hereunder for easy reference:

9. This Court, in Seshammal v. State of T.N. [(1972) 2 SCC 11 : (1972) 3 SCR 815] again reviewed the principles underlying the protection engrafted in Articles 25 and 26 in the context of a challenge made to 2002(8) SCC 106: 2002 INSC 425

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NC: 2024:KHC:29383 AND 1 OTHER abolition of hereditary right of Archaka, and reiterated the position as hereunder : (SCC p. 21, paras 13-14) "13. This Court in Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] has summarized the position in law as follows (pp. 531 and 532):

"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Mahant Jagannath Ramanuj Das v. State of Orissa [AIR 1954 SC 400 : 1954 SCR 1046] , Venkataramana Devaru v. State of Mysore [AIR 1963 SC 1638 : (1964) 1 SCR 561] , Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion.

The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.'

14. Bearing these principles in mind, we have to approach the controversy in the present case." 10.20. By relying on the above, he submits that no matter how longstanding or deeply rooted a customary usage may be, the same cannot prevail against a legislative enactment. A custom cannot be held out as a source of law or

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NC: 2024:KHC:29383 AND 1 OTHER law itself, contrary to the applicable law. He refers to the decision in Animal Welfare Board of India v. Union of India¹⁹, more particularly para 32, which is reproduced hereunder for easy reference:

32. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court's jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long-lasting tradition goes against the law, the law courts obviously would have to enforce the law. The learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In public interest litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paras 53 and 73 in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547: (2014) 3 SCC (Cri) 136], there is judicial determination about the practice being offensive to the provisions of the Central statute. It would be trite to repeat that provisions of a statute cannot be overridden by a traditional or cultural event. Thus, we accept the argument of the Petitioners that at the relevant point of time when the decision in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136] was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.

(2023) SCC Online 661 : 2023 INSC 548

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NC: 2024:KHC:29383 AND 1 OTHER 10.21. Relying on the above, he once again submits that a legislation cannot be invalidated on the ground that it violates customs.

10.22. He relies on the decision of the Hon'ble Apex Court in Animal Welfare Board of India cases (supra), referring to the above he submits that a statute cannot be overwritten by a traditional or cultural event, even if the same is in conflict with the statute.

10.23. By referring to entry V of List 3 of Schedule-VII he submits that the Parliament as well as the State legislature is authorized to enact laws relating to marriage, acquisition, divorce, succession, joint family, partition, etc. which were earlier governed by customs or personal laws. Entry 5 of List

3 of Schedule-VII is reproduced hereunder for easy reference:

5. Marriage and divorce; infants and minors;

adoption; wills, intestacy and succession; joint

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NC: 2024:KHC:29383 AND 1 OTHER family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

10.24. Insofar as the amendment to Section 80 of the Act of 1964 is concerned, he submits that the requirement of making payment of half the assessment was on the ground that a Kodava could be called for rendering military services at any point of time. In the present circumstances, there is no such forced conscription of Kodavas, any services rendered to the military, be it any branch is voluntary for which necessary payments are made as per the prevalent salary structure.

10.25. The amendment made to Section 80 is in furtherance of the grant of full ownership by way of amending subsection (20) of Section 2; both of them are to be read together. Once full ownership is granted under Subsection (20) of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2, full assessment has to be paid in terms of Section 80. In the event of full ownership not being sought for and the occupant continuing to be a tenure holder the restriction of tenure would continue to apply requiring half assessment to be paid. 10.26. Customs and usages as also traditions cannot be a ground for seeking exemption from payment of tax since levy of tax is a sovereign function of the State made in exercise of sovereign powers in furtherance of a validly enacted legislation. He refers to the decision in K.B. Tea Product Pvt. Ltd. and Another vs. Commercial Tax Officer, Siliguri and Others²⁰, more particularly paras 31 and 32 thereof which are reproduced hereunder for easy reference:

(2023) SCC Online 615 : 2023 INSC 530

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NC: 2024:KHC:29383 AND 1 OTHER

31. The main submission on behalf of the appellants is that as prior to 01.08.2001, the appellants were availing the benefit of sales tax exemption, the said right could not have been taken away by virtue of amendment to Section 2(17) of the Act, 1994 on the ground of legitimate expectation as well as by promissory estoppel. Thus, it is the case on behalf of the appellants that as on 01.08.2001, under the Act, 1994, when Section 2(17) of the Act, 1994 came to be amended, the appellants had a

"vested right" and therefore, the amendment to Section 2(17) of the Act, 1994 shall not affect such "vested right" of exemption from payment of sales tax, which the appellants were availing prior to 01.08.2001.

32. However, it is required to be noted that this is a case of claiming exemption from payment of sales tax. As per the settled position of law, nobody can claim the exemption as a matter of right. The exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the State. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government and it falls within the policy decision and as per the settled position of law, unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision.

10.27. Relying on the above he submits that the court has held that there can be no exemption claimed for tax.

10.28. He submits that the Jamma tenure system is a land tenure system and is not strictly a custom, usage, or tradition and therefore, would not

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NC: 2024:KHC:29383 AND 1 OTHER come within the purview of Article 29 of the constitution. The Jamma land tenure system not being in tune with the social context of today, the State has carried out the necessary amendments to include, by conferring absolute rights and powers to the land holder. No ground under Article 29 has been made out in regard to the challenge in the present case.

10.29. He refers to the decision in Mohd. Hanif Quareshi vs. State of Bihar²¹, more particularly paras 12, 13 and 15 thereof which are reproduced hereunder for easy reference:

12. Before we actually take up and deal with the alleged infraction of the petitioners' fundamental rights, it is necessary to dispose of a preliminary question raised by Pandit Thakurdas Bhargava. It will be recalled that the impugned Acts were made by the States in discharge of the obligations laid on them by Article 48 to endeavour to organise agriculture and animal husbandry and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of certain specified animals. These directive principles, it is true, are not enforceable by any court of law but nevertheless they are fundamental in the AIR 1958 SC 731

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NC: 2024:KHC:29383 AND 1 OTHER governance of the country and it is the duty of the State to give effect to them. These laws having thus been made in discharge of that fundamental obligation imposed on the State, the fundamental rights conferred on the citizens and others by chapter III of the Constitution must be regarded as subordinate to these laws. The directive principles, says learned counsel, are equally, if not more, fundamental and must prevail. We are unable to accept this argument as sound. Article 13(2) expressly says that the State shall not make any law which

takes away or abridges the rights conferred by Chapter III of our Constitution which enshrines the fundamental rights. The directive principles cannot over-ride this categorical restriction imposed; on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of chapter III will be "a mere rope of sand". As this Court has said in the State of Madras v. Smt Champakam Dorairajan [1951 SCC 351 : 1951] SCR 525, 531], "The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights".

13. Coming now to the arguments as to the violation of the petitioners' fundamental rights, it will be convenient to take up first the complaint founded on Article 25(1). That article runs as follows:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

After referring to the provisions of clause (2) which lays down certain exceptions which are not material for our present purpose this Court has, in

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NC: 2024:KHC:29383 AND 1 OTHER Ratilal Panachand Gandhi v. The State of Bombay [(1954) SCR 1055, 1062-1063] explained the meaning and scope of this article thus:

"Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people."

What then, we inquire, are the materials placed before us to substantiate the claim that the sacrifice of a cow is enjoined or sanctioned by Islam? The materials before us are extremely meagre and it is surprising that on a matter of this description the allegations in the petition should be so vague. In the Bihar Petition No. 58 of 1956 are set out the following bald allegations:

"That the petitioners further respectfully submit that the said impugned section also violates the fundamental rights of the petitioners guaranteed under Article 25 of the Constitution in-as-much as on the occasion of their Bakr Id Day, it is the religious

practice of the petitioners' community to sacrifice a cow on the said occasion. The poor members of the community usually sacrifice one cow for every 7 members whereas it would require one sheep or one goat for each member which would entail considerably more expense. As a result of the total ban imposed by the impugned section the petitioners would not even be allowed to make the said sacrifice which is a practice and custom in their religion, enjoined upon them by

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NC: 2024:KHC:29383 AND 1 OTHER the Holy Quran, and practised by all Muslims from time immemorial and recognised as such in India."

The allegations in the other petitions are similar. These are met by an equally bald denial in paragraph 21 of the affidavit in opposition. No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah CVIII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those verses or throwing any light on this problem. We, however, find it laid down in Hamilton's translation of Hedaya Book XLIII at p. 592 that it is the duty of every free Mussulman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. The very fact of an option seems to run counter to the notion of an obligatory duty. It is, however, pointed out that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats. So there may be an economic compulsion although there is no religious compulsion. It is also pointed out that from time immemorial the Indian Mussalmans have been sacrificing cows and this practice, if not enjoined, is certainly sanctioned by their religion and it amounts to their practice of religion protected by Article 25. While the petitioners claim that the sacrifice of a cow is essential, the State denies the obligatory nature of the religious practice. The fact, emphasised by the respondents, cannot be disputed, namely, that

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NC: 2024:KHC:29383 AND 1 OTHER many Mussalmans do not sacrifice a cow on the Bakr Id Day. It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows. We have, however, no material on

the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners.

15. The meaning, scope and effect of Article 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjitlal Chowdhury v. The Union of India [(1950) 1 SCR 869] and ending with the recent case of Ramakrishna Dalmia v. Union of India [CAs Nos. 455-457 and 657-658 of 1957, decided on March 28, 1958] . It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is

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NC: 2024:KHC:29383 AND 1 OTHER that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. We, therefore, proceed to examine the impugned Acts in the light of the principles thus enunciated by this Court. 10.30. By referring to the above, he submits that there is a presumption that any statute or enactment is constitutionally valid, and it would therefore be for the person who challenges the validity of legislation to establish that the same is violative of constitutional principles.

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NC: 2024:KHC:29383 AND 1 OTHER 10.31. He also refers to the decision in Noel Harper vs. Union of India²², more particularly para no. 141 which is reproduced hereunder for easy reference:

141. It was vehemently urged that there is lack of infrastructure at the designated bank and that the bank branch is manned only by 40 odd personnel.

To buttress this plea, reference is made to the observation made by Reserve Bank of India--that voluminous data on foreign remittances will put an extra financial burden on the Bank and increase its costs including divert focus on monitoring of suspicious transactions. This argument does not commend to us at all. In digital banking operations, it is not the head count dispensing physical services that would matter, but the effectiveness of the software is important. We are also not impressed by the plea that for organisations located in remote parts of the country, there would be impediments and for that reason, Section 7 violates test of fairness and reasonableness. In any case, Respondent 3 (SBI) has on affidavit explained as to the extent of measures taken for ensuring efficient servicing of FCRA accounts of all the registered associations/account-holders. Respondent 3 has also assured that if need arises, suitable corrective measures including to upgrade the facilities/services would be taken at its end. Suffice it to observe that the argument under consideration cannot be the basis to doubt the constitutional validity of the provisions in the form of Section 12(1-A) and Section 17(1), as amended vide the Amendment Act. Needless to underscore that Respondent 3 has stated on affidavit before this Court that FCRA accounts opened in its designated branch can be operated online on real- (2022) SCC Online 434

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NC: 2024:KHC:29383 AND 1 OTHER time basis without the need for physical presence of the account-holder or its officials. 10.32. By relying on the above, he submits that mere contention that the implementation of a statute would give rise to a difficulty would not be a valid ground to challenge the same. 10.33. He relies on the Affidavit of the Under Secretary to the Revenue Department, Government of Karnataka, which has been filed stating that in terms of Cheekere Poovaiah's case, the holders of unalienated Jamma Bane lands both privileged and unprivileged were not entitled to the following rights which a fully accessed alienated bane lands would be entitled to:

10.34. The right to use and occupy the land was conditional on the payment of the amount due on account of land revenue for the same;

i. Right to transfer of occupancy rights;

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NC: 2024:KHC:29383 AND 1 OTHER ii. Right to pass on occupancy rights to legal heirs.

10.35. The Under Secretary has categorically stated in the affidavit that by virtue of the impugned amendment the holders of privileged and unprivileged Jamma Bane lands are placed at par with the occupants of unalienated fully assessed lands, thereby being entitled to the aforesaid three rights and also entitled to claim all incidents of occupancy of the said lands. It is stated that a holder could apply to the Revenue Inspector and Tahsildar making an application on that behalf, the Tahsildar would forward a report to the Department of Survey to ascertain possession over the concerned property and verification of the family tree.

10.36. Sri. Vikram Huilgol, on instructions, submits that only a verification of the family tree and

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NC: 2024:KHC:29383 AND 1 OTHER possession is made and that there is no requirement for a partition deed to be executed and or that an 11E sketch be prepared as regards the area falling to the share of the applicant seeking registration of the partition deed. His submission is that if a family tree is provided along with the details of the occupants, possession entry would be made in column No.9 of the RTC. He categorically submits that there is no requirement of a partition deed to be executed nor is the State forcing any Kodava family to execute a partition deed for the purpose of registration of their name into the revenue records. His submission is placed on record.

10.37. Based on all the above, he submits that the above petitions are to be dismissed.

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NC: 2024:KHC:29383 AND 1 OTHER

11. Reply affidavit has been filed by the Petitioners reiterating some of the arguments which have been advanced and it is reiterated that the revenue Officers are seeking for partition deed and a 11-E sketch for making entries into revenue records.

12. Heard Smt. Sarojini Muthanna, learned counsel for the Petitioners and Sri. Vikram Huilgol, learned Additional Advocate General along with Smt. Saritha Kulkarni, learned HCGP for respondents. Perused papers.

13. The points that would arise for consideration are:

1. Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?
2. Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system?
3. Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of

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NC: 2024:KHC:29383 AND 1 OTHER any customary practice, usage or tradition of the Kodava race?

4. Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled?

5. Is the amendment made to Subsection (20) of Section 2 valid or not?
6. Is the amendment to Section 80 of the Karnataka Land Revenue Act valid or not?
7. What is the effect of the impugned amendment?
8. What Order?

14. I answer the above points as under

15. Answer to Point No.1: Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?

15.1. The submission of Smt. Sarojini Muthanna, the learned counsel for the Petitioners is that the impugned amendments which have been

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NC: 2024:KHC:29383 AND 1 OTHER carried out are violative of the customs, usage, and traditions of the Kodava community/race. 15.2. The submission is that the concept of partition is not recognised amongst the persons belonging to the Kodava race, if partition is effected, then, the whole concept of a joint family of Kodavas or the Kodava joint family would be destroyed. The entire land and the properties of a Kodava family are vested in the entire family. There is no distribution of the properties amongst the family members. In view of the amendment, the revenue officers are requesting and/or demanding that a partition deed be provided for the purpose of entry of names of the members of the family as also a sketch showing the entitlement of a member of the family, thus, essentially, forcing a partition in a Kodava family by metes and bounds. The submission is that since this

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NC: 2024:KHC:29383 AND 1 OTHER demand is made for Jamma Bane land, the partition deed would virtually apply to all the properties including the Jamma Bane land thereby constraining the persons belonging to the Kodava race to violate the customs and traditions of the Kodavas.

15.3. In this regard, she submitted that by reference to various sources which have been reproduced hereinabove viz., the Coorg Land Revenue Regulations, 1899 ['CLRR' for short] and authoritative books viz., Major General Rob. Cole, A Manual of Coorg Civil Law, G. Richter's Gazetteer of Coorg, Kodavas-a Pictorial by B.D. Ganapathy, Karnataka State Kodagu District Gazette' by Suryakanth Kamath, Land Systems of British India' by B.H. Baden Powell amongst others.

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NC: 2024:KHC:29383 AND 1 OTHER 15.4. That Kodavas are a patrilineal clan having a family name, which is also called the house name. The house name relates to an 'Aiyne Mane' which is the dwelling house of the family. All the members of the family reside together in the 'Aiyne Mane'. They being engaged in agricultural activities; they own lands called 'Warg land' (wet land). The 'Warg lands' are lands which are attached to a 'Bane'(dry land). The said 'Bane' is further classified as 'Jamma Bane' and 'UmbliBane. All these lands, the dwelling house belonging to the joint family is owned, possessed and enjoyed by all members of the joint family.

15.5. The property earlier stood in the name of the elder of the family known as 'Patedara' with the names of the other members of the family also entered into the revenue records, thus, evidencing right, title and interest of not only

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NC: 2024:KHC:29383 AND 1 OTHER the 'Patedara' but also of all the joint family members.

15.6. The Bane land though not initially belonging to the family, was allotted to the family by the Raja by issuing a 'Sisht' which was so issued for the services to be rendered by the Kodavas in the military campaigns of the Rajas. The Kodavas were part of the reserve army and could be called upon by the Raja to render military service as regards which the Kodavas were entitled to make use of the 'Bane land' without paying any tax as if they were the owners thereof.

15.7. With the passage of time and the advent of coffee plantation, the 'Jamma Bane' land which was to be used for grazing, manuring and certain incidental activities pertaining to agriculture where on an application was

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NC: 2024:KHC:29383 AND 1 OTHER permitted to be made use for activities other than the above viz., cultivation of coffee, once such permission was granted. The 'Jamma Bane' land was treated as alienated Jamma Bane and the land which was not so permitted continued to be unalienated 'Jamma Bane' land, which continued to be attached to the Warg land. These Jamma Bane lands whether alienated or unalienated continued to be in the possession, occupation and enjoyment of the Kodava family and as such, formed the property of the Kodava family.

15.8. In that background, it is contended that the entries having been made of all the members of the family in the revenue records, the property belonging to the entire family with each member of the family being a division holder, by way of the amendment, a partition being forced upon the family, there would be a

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NC: 2024:KHC:29383 AND 1 OTHER requirement to divide the property by metes and bounds for entry of the name of the members of the family into the revenue records since the very concept of a

division holder could be done away with, which confers rights on the entire family.

15.9. The submission of Sri. Vikram Huilgol, learned Additional Advocate General on behalf of the State is that there was no ownership of the property vested with the Kodavas insofar as Jamma Bane land is concerned whether alienated or unalienated. By way of the amendment, the Kodavas or the joint family is granted full ownership right as that of an occupant and as such, a beneficial amendment which acts in favour of the Kodavas. In terms of the amendment, there is no requirement of any partition being effected and/or a survey sketch being produced delineating the property falling

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NC: 2024:KHC:29383 AND 1 OTHER to the share of each of the family members for entry of their name in the revenue records. His further submission is that there is no mandate requiring partition of the property belonging to the Kodava race. The State has not sought to interfere with any of the customs, practices or tradition of the Kodavas. They can either continue to be joint family holders or partition as per their choice. There is no compulsion for a partition by virtue of the impugned amendment. 15.10. It is in that background of the above, I have to answer the points raised.

15.11. It is not in dispute that the Kodavas are a military race and had provided military services to the Raja for a time immemorial. It is also not in dispute that the Raja could call upon the Kodavas to render military services and during the time that such military services was not

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NC: 2024:KHC:29383 AND 1 OTHER rendered, there was no obligation on part of the Raja to make payment of any salary to the Kodavas. It is in that background that the land was granted to the Kodavas by the Raja in the form of Jamma Bane land by issuance of a Sanad permitting the Kodavas to make use of the land along with their Warg land for the purposes of grazing, manuring, etc. Thus, these lands were essentially not one which belonged to Kodavas but belonging to the Raja who by way of a Sanad granted a licence to the Kodavas to make use of the land appurtenant to their own land as regards which no tax was liable to be paid by the Kodavas. The usage of the land as also an exemption from making payment of any tax was on account of the military services required to be rendered by the Kodavas to the Raja as and when called upon. The Jamma Bane land though enured to the

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NC: 2024:KHC:29383 AND 1 OTHER benefit of the Kodava family and could be used, there is no absolute ownership confirmed on the Kodavas by such Sanad or license to make use of the land.

15.12. There can be no dispute in respect of various authoritative texts cited by Smt. Sarojini Muthanna. All those texts only indicate that the Jamma tenure or the bane land are part of the land of Kodavas. The issue in the present matter is not as regards the Jamma tenure or bane land or the

entitlement of the Kodava family to use the Jamma land appurtenant to their land. That right is well recognised and the Kodava family has been held to be entitled to make use of the Jamma land appurtenant to the Warg land. There is also no dispute as regards the payment of land revenue or concession in payment of land revenue since that is not affected by the amendment per se.

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NC: 2024:KHC:29383 AND 1 OTHER 15.13.A Full Bench of this Court in Cheekere Poovaiah's case while dealing with sub-soil rights, more particularly mines and minerals, came to a conclusion that those mines and minerals would belong to the Government and further came to a conclusion that there is no ownership right of the holder in respect of Jamma Bane land either privileged or unprivileged. An exception is however made as regards alienated bane land, in that, if the said land had been alienated under the orders of the authorities passed under Rule 136 of the CLRR, the holder of such alienated bane would become entitled to cultivate the bane land as a separate holding on payment of full assessment being entitled to full rights. In the event of the land not being alienated, then whether privileged or unprivileged, it is only a right of usage which is vested with the occupant.

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NC: 2024:KHC:29383 AND 1 OTHER 15.14.The above being the finding of the Full Bench, it is clear that all sub-soil rights as also right to trees etc., vested with the Government and the occupant had only the right for grazing, manuring, collection of firewood and/or incidental agricultural activities carried out in respect of his/their Warg lands. Insofar as alienated Jamma Bane land, the persons would be a full owner. By way of the amendment, it is seen that even as regards privileged or unprivileged Jamma Bane land, occupancy rights are recognised in terms of the amendment. As a consequence thereof, full assessment is required to be paid in respect of this Jamma Bane land, including unalienated Jamma Bane land as regards which occupancy rights have been recognised under sub-section (20) of Section 2.

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NC: 2024:KHC:29383 AND 1 OTHER 15.15.Insofar as partition or division of the property is concerned, that is a matter which lies in the sole discretion of the family members. If the family members wish to continue as a joint family for all time to come, there is no embargo on doing so. However, the Kodavas are also governed by the Mitakshara law of succession. Each member of the family would be entitled to assert his/her right in respect of the property of the family and there cannot be an embargo imposed by the State on the members of the family not to partition and/or divide the property among themselves.

15.16.The amendment as aforesaid only confers complete ownership rights of the property which is beneficial in nature. The aspect of whether the family members want to carry out a partition or not is left to the wisdom and sole discretion of the family members.

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NC: 2024:KHC:29383 AND 1 OTHER 15.17.The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that the impugned amendment which has been now effected is contrary to the customary practices of the Kodavas. Hence, on that ground she seeks for a declaration that the amendment is unconstitutional. For this purpose, she refers to Article 13 of the Constitution and contends that in terms of Clause (a) of sub-clause (3) of Article 13 of the Constitution, law would include custom or usage and therefore, no amendment could be made to a Statute contrary to the custom or usage. Article 13 of the Constitution is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights.--(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (3) In this article, unless the context otherwise requires,--

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. [(4) Nothing in this article shall apply to any amendment of this Constitution made under article

368.] 15.18.What Article 13 of the Constitution prescribes is that law cannot be inconsistent with or in derogation of the fundamental rights with reference to the law introduced prior to coming into force of the Constitution. Sub-Clause (1) of Article 13 of the Constitution deals with all the laws in force prior to coming into force of the Constitution and mandates that any such law in force in the territory of India inconsistent with the provisions of Part III of the Constitution shall to the extent of inconsistency be void. Therefore, Sub-Article (1) of Article 13 of the

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NC: 2024:KHC:29383 AND 1 OTHER Constitution would apply only in respect of laws already in force and them being inconsistent with Part III. Needless to say, sub-clause (1) of Article 13 of the Constitution would not apply to the present facts and situation. Sub-Clause (2) of Article 13 of the

Constitution mandates that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of sub-clause (2) of the Constitution shall to the extent of the contravention, be void, that is to say, that any new law brought about by the State shall not be in contravention of Part III and if there is any violation of Part-III by any law brought into force, to that extent, the new law would be void.

15.19. Sub-Clause (3) is virtually a definition clause and distinguishes between law and law enforced. Clause (a) of sub-clause (3) of Article

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NC: 2024:KHC:29383 AND 1 OTHER 13 of the Constitution indicates that law would include any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having the force of law. Clause (b) of sub-clause (3) of Article 13 of the Constitution deals with law in force and includes law passed by the Legislature or other competent authorities in the territory of India before the commencement of the Constitution not previously repealed and as such, deals with laws in force as on the date on which the Constitution came into force. Hence, Clause (b) of sub-clause (3) of Article 13 of the Constitution would also not be applicable to the present facts.

15.20. Insofar as Clause (a) of sub-clause (3) of Article 13 of the Constitution as mentioned above, it is virtually a definition clause defining what law would mean and does not indicate that a custom or usage cannot be overridden or

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NC: 2024:KHC:29383 AND 1 OTHER substituted by a law. Reading of Clause (a) of sub-clause (3) with sub-clause (1) and sub-clause (2) of Article 13 of the Constitution would only indicate that any law shall not be inconsistent with or in derogation to Part III of the Constitution. Clause (a) of sub-clause (3) of Article 13 of the Constitution does not in any manner save a custom or usage from any statutory intervention by the Parliament or the Legislature. It only mandates that no custom or usage shall be inconsistent with or in derogation of Part III of the Constitution.

15.21. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General, a law enacted by the Central Parliament or State Legislature cannot be declared unconstitutional unless it is in flagrant violation of the provision of the Constitution. For that purpose, there are several tests that have been laid down in

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NC: 2024:KHC:29383 AND 1 OTHER numerous decisions of the Hon'ble Apex Court. There is no decision that has been placed on record by the Petitioner to indicate that substitution or cancellation of a custom or usage would be a ground to challenge the constitutional validity of a legislation that is contrary to the custom or usage of a particular class of persons.

15.22. As held by the Hon'ble Apex Court in Rakesh Kohli's case (supra) and Ashok Kumar Thakur's case (supra), as to what is required for a statute to be declared as unconstitutional, and the following are to be fulfilled:

- i) It is violative of Article 14 of the Constitution;
- ii) Violative of the constitutional provision;
- iii) The appropriate legislature did not have the competence to make the law;

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NC: 2024:KHC:29383 AND 1 OTHER

- iv) That it violates in particular the fundamental rights enumerated in Part III of the Constitution.
 - v) If the statute is so arbitrary or unreasonable that it must be struck down.
 - vi) The term 'arbitrary' to be read as 'discriminatory'
 - vii) It unreasonably restricts the fundamental rights under Article 19 of the Constitution etc.,
- 15.23. As held by the Hon'ble Apex Court in Binoy Viswam's case (supra), there is a three step process required to be resorted to by a Court of Law:

- 1) Examine as to whether the impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions or it falls foul of the federal

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NC: 2024:KHC:29383 AND 1 OTHER distribution of powers? If it is not found to be so, no further exercise is needed to be done and the challenge would fail. If it is found that the Legislature lacks competence, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution.

- 2) If the impugned provision is violative of the fundamental rights or other constitutional rights;
- 3) If the first phase of enquiry is against the statute, then in the second phase, the Court would have to undertake the exercise to see if the impugned provision can be saved by reading it down so as to bring it in conformity with the provision of the Constitution, if possible to do so.
- 4) If the second stage is not possible, then in that event if the offending portion of the statute is severable, the court ought to/may strike down such a severed portion, if not, strike down the entire impugned provision as unconstitutional.

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NC: 2024:KHC:29383 AND 1 OTHER 15.24.In the present case, it is not the case of the Petitioner that the State Legislature does not have the power to amend the Karnataka Land Revenue Act. The ground of challenge as indicated above is only as to whether, by way of the amendment, the customs, traditions and usage are infringed. As referred to supra and as detailed out in the aforesaid decisions of the Hon'ble Apex Court, such a ground is not available.

15.25.The Hon'ble Apex Court in the Animal Welfare Board of India's case (supra) has categorically come to a conclusion that a provision or a statute cannot be overridden by a traditional or cultural event. In that matter, the Hon'ble Apex Court was ceased of the challenge to a ban on Jallikattu and came to a conclusion that the practice of Jallikattu was violative of the Prevention of Cruelty to Animals Act, 1960.

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NC: 2024:KHC:29383 AND 1 OTHER This case would be an illustration of a legislation overriding a tradition or a practice resorted to by the general populace 15.26.There are several such enactments which have been brought into force to get rid of social evils. Some of the prominent ones that could be referred to are the Dowry Prohibition Act, Child Marriage Act, Hindu Succession Amendment Act thereto, POCSO Act, etc. All these Legislations in some manner or the other have been brought into force by the Parliament and/or by the State legislature to prohibit or in some cases criminalise certain customs and traditions that have been followed. It is up to the legislature in its wisdom to decide on which custom, practice or tradition is acceptable, being in accordance with the requirement of the Constitution and which are in violation of the fundamental rights enshrined under the Constitution.

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NC: 2024:KHC:29383 AND 1 OTHER 15.27.If any such social, custom, practice or tradition is violative of the fundamental rights enshrined under the Constitution in terms of Clause (a) of Sub-Clause (3) of Article 13 by itself, those customs, traditions and usages would be void. However, the Parliament or the State Legislature can also bring about laws to criminalise such practices and/or prohibit such practices. Such action on part of the Centre or the State cannot be questioned only on the ground that the legislation or the Statute brings about a situation to negate a custom or tradition.

15.28.The contention that the CLRR and KLRA recognise, provide and protect the customary laws of Kodavas is again misconceived. The submission made by Ms. Sarojini Muthanna, learned counsel for the Petitioners that there is a prohibition for alienation of the Jamma Bane

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NC: 2024:KHC:29383 AND 1 OTHER land which forms part of the ancestral land on account of customs and traditions and is protected under CLRR and the subsequent KLRA is not borne out by records.

15.29.A perusal of Section 45 of the CLRR would indicate that even under the CLRR, there is a possibility of permission from the Assistant Commissioner for alienation of the lands and it is only when such permission from the Assistant Commissioner is not obtained that summary eviction in case of alienation without such permission is made can be resorted to. Thus, Section 45 of the CLRR lays down the consequences of alienation without permission of the Assistant Commissioner and does not in any manner impose any restriction or prohibition on alienation.

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NC: 2024:KHC:29383 AND 1 OTHER 15.30.Section 100 of the CLRR also speaks of transfer with the previous sanction of the prescribed authority and does not impose a prohibition on transfer but makes it only conditional upon permission being granted.

15.31.Though the CLRR is recognized by the KLRA and CLRR itself did not recognize any prohibition, the question of the KLRA recognizing any prohibition to support customary laws of the Kodavas would not arise.

15.32.Article 245 of the Constitution of India which has been pressed into service to challenge the constitutional validity of the amendment would also not in my considered opinion apply since the same provides only for powers of the Parliament to make laws for the whole or any part of the territory of India and the legislature of a State to make laws for whole or any part of

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NC: 2024:KHC:29383 AND 1 OTHER the State. The State Legislature having made the impugned laws which have an effect within the State of Karnataka cannot be said to fall foul of Article 245 of the Constitution. 15.33.The decision in Kerala Education Bill, 1957 was one rendered in a situation relating to equality under Article 14 of the Constitution and are relatable to Article 29 and 30 of the Constitution which relates to cultural and educational rights.

15.34.Though the Kodavas could be considered to be a minority not only in the State of Karnataka but across the country, the said provisions could be attracted only if there was any violation of the fundamental rights of the Kodavas made on account of the amendment. Except to contend that there is a violation of the customary laws, there is no other further

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NC: 2024:KHC:29383 AND 1 OTHER ground made out as regards violation of Article 28, 29 and 30 of the Constitution to make them applicable to hold the amendment to be in violation of the Constitution.

15.35.The decision in Sardar Syedna's case also in my considered opinion would not be applicable for the reason that, the decision was relating to a practice to propagate a religion and its religious practices wherein the Head of the Muslim Bohra community was conferred certain rights and powers to excommunicate persons of the community who did not adhere to their directions. This was held to be an essential practice in order to maintain the discipline of the Muslim Bohra community and in that background the practice was upheld by the Hon'ble Apex Court. There is no such question involved in the present matter. Non-alienation of land vested with the family is not one which

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NC: 2024:KHC:29383 AND 1 OTHER is required for the purposes of propagating the Kodava race and neither are the Kodavas recognised as a separate religion in contrast to Hinduism, further, they are also governed by the Mitakshara School of Hindu Law. As observed supra, the various treatises and authoritative texts which have been referred to by Ms. Sarojini Muthanna, learned counsel for the Petitioners themselves envisage the possibility of alienation albeit with prior permission/sanction.

15.36.The reference to Article 51A(f) of the Constitution to contend that there is a duty cast on the State to preserve the rich heritage and composite culture cannot be disputed. Preservation of rich heritage and composite culture would require that such a practice has been recognised and continues to be in force even as of today. In this case, the practice

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NC: 2024:KHC:29383 AND 1 OTHER relates to the non-alienation of a joint family property. As referred to Supra, at the cost of reputation, it is once again reiterated that there was never any prohibition for alienation so long as prior sanction is obtained and this being in the nature of a condition attached to a land tenure cannot be contended to be an essential customary, custom or practice of the Kodava race. Thus, Article 51A(f) of the Constitution also would not be applicable to the present case.

15.37.The submission of Smt. Sarojini Muthanna, learned counsel for the Petitioners, is that the customary law is recognised under the CLRR and as such, the partition of the property and subsequent alienation, if any, made by the person to whom the said portion of the property falls to the share would be violative of Section

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NC: 2024:KHC:29383 AND 1 OTHER 45 of the CLRR, since the property is required to be enjoyed by all members of the family, cannot also be countenanced inasmuch as by the recognition of full occupancy rights in terms of sub-section (20) of Section 2, the entire family would become the owner of the property. The ownership is still not vested with individual members of the family in terms of the amendment.

15.38.Insofar as the further contention of Smt. Sarojini Muthanna that without entry of the name of each of the family members, no loan could be obtained since no guarantees could be issued by the family members is again misconstrued. As afore observed, the property continuing to be in the name of the family, the names of the members of the family would also be added to the revenue records. Their name being present in the revenue records, would

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NC: 2024:KHC:29383 AND 1 OTHER always enable them to apply for and obtain necessary loans from the concerned banks. 15.39.Insofar as there being a prohibition for sale of the property outside the patrilineal clan, the pre-emption rights which are available under Section 4 of the Partition Act, 1893 could be exercised by the members of the patrilineal clan.

15.40.Her submission that until now taxes were exempted on the property and by way of the impugned amendment, taxes are required to be paid cannot be a ground to challenge such statutory amendment. A fiscal aspect of any of act or otherwise cannot be a ground for challenge. Even otherwise, the exemption from making payment of tax which was granted to the Kodavas on account of the military service expected to be rendered by them to the then

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NC: 2024:KHC:29383 AND 1 OTHER Raja and subsequently to the British, there is no such compulsion today for the Kodavas to render military service. Such service today is voluntary and not a forced service as was under

the Raja.

15.41.It would, however, be required for me to recognise and take cognisance of the glorious service rendered by members of the Kodava race to the armed forces. I would also have to commend the members of the Kodava race for having voluntarily rendered such glorious service and protecting the motherland. That does not, however, mean that members of the Kodava race would be forced to serve in the military, in today's time and age, under the Constitution of India, there is no concept of forced conscription recognised in India.

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NC: 2024:KHC:29383 AND 1 OTHER 15.42.The invocation made of Article 13 of the Constitution of India to contend that there is a violation of customary rights, since customs or usage are deemed to be law under Clause (3)(a) of Article 13 of the Constitution of India would also not enure to the benefit of the Petitioners since the reference to Clause (3)(a) of Article 13 of Constitution of India relates to Clause (1) of Article 13 of Constitution of India which speaks of all laws in force in the territory of India and mandates that any law in force which is inconsistent with the Provisions of Part- III shall to that extent of inconsistency be void. Thus, in terms of Clause (1) of Article 13 of the

Constitution of India, any law inconsistent, including customary law or usage would be rendered void. Clause 3(a) would not amount to a restriction or embargo on the State to enact any law contrary to the customs and usage.

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NC: 2024:KHC:29383 AND 1 OTHER 15.43.The decision in Jagdev Singh Sidhanti's case was in relation to elections and malpractice where the candidate had extorted for votes to be granted to him in order to protect a particular language. The same would also have no bearing in the present facts and circumstances.

15.44.A perusal of Rule 164 of the CLRR would make it clear that there is in fact no prohibition for alienation of the Jamma land. The only requirement was that the person seeking for sale was required to approach the Assistant Commissioner. The Assistant Commissioner could grant permission for sale, gift, mortgage or release as contained therein. Thus, it is clear that even under CLRR, there is a possibility of alienation recognised and therefore it cannot be now contended that the customs and traditions

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NC: 2024:KHC:29383 AND 1 OTHER prohibit the alienation of the property belonging to the joint family.

15.45.The decision in C.A. Nanjappa's case is relied upon to contend that in terms of section 145 of the CLRR, the prohibition for partition is not one which can be a ground for challenge of the amendment to sub-section (20) of Section 2 as also the amendment to Section 8o. By virtue of the amendment to sub-section (20) of Section 2, full occupancy rights/full ownership is granted. By virtue of amendment to Section 8o, the assessment/tax is collected. Neither of these two amendments would explicitly or implicitly permit partition. The aspect of partition, if sought for by any member of the family, the same could be contested on the basis of Section 145 of the CLRR or any other grounds which may be available to the parties.

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NC: 2024:KHC:29383 AND 1 OTHER The said ground which has been contended to be the natural consequences of the amendment being made, cannot be accepted, more so, in view of the submission made by the learned Additional Advocate General, and in view of the affidavit filed by the Under Secretary, Revenue Department that there would be no requirement for producing a partition deed or a survey sketch/11-E sketch for the purpose of entry of a member of a family in Column No.9 of the RTC. Thus, without any partition being effected, the names of any family member which has been missed out or which is required to be added on account of birth etc, and any name of a member required to be deleted on account of death etc, can be so done without a partition being effected. Thus, I am of the considered opinion that the impugned amendments do not in any manner offend Section 195 of the CLRR

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NC: 2024:KHC:29383 AND 1 OTHER and there is no mandatory requirement for partition to be effected amongst the Kodava family, post the impugned amendment. 15.46.Insofar as customs and traditions are concerned, the submission made by the learned Additional Advocate General that even during times of the Raja and/or the British rule, a partition could be effected as also properties sold to a third party is sought to be substantiated by reference to a Book 'Religion and Society Among by the Coorg -South India by M.N. Sreenivas' wherein it is stated that the seller could pay 5% of the market value of the property as Nazarana to the State, for such sale, which was subsequently enhanced to 20%. In this regard, even Rule 164 of the CLRR empowered the Assistant Commissioner to permit the alienation of the

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NC: 2024:KHC:29383 AND 1 OTHER jamma, jamma umbli, bhatamanya and jahghir lands by way of sale, gift, mortgage or release of maintenance shares etc. Thus, in my considered opinion, it cannot now be contended that there was always an embargo for a member of a Kodava family to alienate his property to a third party and/or for partition to be effected amongst the members of the Kodava family. Thus, in my opinion, there is no custom, usage or tradition, which can be said to be in existence prohibiting the alienation or partition of the property of a Kodava family. 15.47.The decision of the Hon'ble Apex Court in Adithayan's case and Animal Welfare Board of India's case would in clear and categorically terms establish that it is a legislative enactment which is required to be given effect to, even if, there are customary practices which have been prevalent and accepted for a long period of

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NC: 2024:KHC:29383 AND 1 OTHER time. It is the legislature which is supreme and by way of the legislative enactment where a particular custom is overridden, prohibited or regulated, the same would not be a ground for challenge unless the same is without legislative competence or is violative of the fundamental rights guaranteed under Part-III of the Constitution.

15.48.In the present case, there being no doubt as regards the competence of the legislature, more so, when in terms of Entry 5 of List 3 of Schedule-VII, it is the State which can enact laws relating to marriage, divorce, succession, joint family partition, land laws etc. 15.49.The origin of Jamma Bane land being on account of issuance of a Sanad by the Raja allotting or making available certain land for the use of a member of the Kodava race or a

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NC: 2024:KHC:29383 AND 1 OTHER Kodava family. The land granted by the Raja being the wet land-warg land, there is only a right granted to such Kodava family or a person belonging to the Kodava race to make use of the appurtenant land for the purpose of grazing, manuring and any other agricultural activities. This land being called Jamma Bane land went with the Warg land and

formed a kind of land tenure inasmuch as on account of the right to use this land, the member of Kodava race and/or Kodava family was required to render military service when called upon, and in respect of this land, either tax was not required to be paid or a concession in tax was made available. Subsequently, the Jamma Bane land was classified as privileged and unprivileged. The privileged land being capable of being used for the purpose of growing coffee, which arose with the advent of coffee plantation in the

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NC: 2024:KHC:29383 AND 1 OTHER country, and more particularly in that region. The aspect of privileged and unprivileged land came about on account of changed circumstances and as a modification of the land tenure of Jamma Bane. Subsequently, some of the lands were permitted to be alienated as regards which full assessment was required to be paid and the lands which were not alienated continued to be unalienated entitled to concession in assessment. This classification of alienated land is also a further modification of the land tenure. The Kodava family having established a Kaimada or a temple for ancestors is not a part of the land tenure, nor is demarcation of Thutengalas part of the land tenure. This is only a manner of utilisation of the bane land for such purposes which are non- agricultural in nature, since those lands were not fit for agricultural use, mainly for the reason

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NC: 2024:KHC:29383 AND 1 OTHER that during those times, use of lands for agriculture would only be from wet lands and not dry lands.

15.50. Thus, I answer Point No.1 by holding that neither a Statute nor an amendment to the Statute can be questioned on the basis of the Statute or amendment thereto being violative of customs, usage or traditions. Any challenge to a statute or amendment to a statue can only be made on the basis of the available grounds as indicated above, and as laid down by the Hon'ble Apex Court in several decisions.

16. Answer to Point No.2: Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system? 16.1. Ms. Sarojini Muthanna, learned counsel for the Petitioners has sought to contend that the Jamma Bane lands are incapable of alienation,

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NC: 2024:KHC:29383 AND 1 OTHER there is a prohibition on alienation. If the said land is permitted to be alienated, the entire edifice of the family system of Kodavas would be destroyed. This aspect and contention would have to be examined from the law and documents on record; this has also, to some extent, been considered by me in answer to Point no.1.

16.2. A perusal of the Karnataka State Kodagu District Gazette by Suryakanth Kamath relied upon by the Petitioner would indicate that there was a recommendation made not to permit the Coorgis to sell their property, since that may result in impoverished Coorgis to dispose off the land to Europeans or natives of Mysore from whom a service of the like rendered by Coorgis could not be expected. That is to say that the permission was not denied on the basis of any customary practice but only on the ground of

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NC: 2024:KHC:29383 AND 1 OTHER keeping the Kodavas sub-servient and render military services which they were rendering to the British by granting an exemption of payment of taxes. The lands as could be seen were classified as Sagu land and Jamma land, which classification is made for the purpose of land tenure and imposition of land revenue. 16.3. As could be seen from the reference made by the learned counsel for the Petitioner herself relating to the publication by B.H. Baden Powell in 'Land Systems of British India'. The reference made to Jamma land is as Jamma tenure and reference made to Sagu is as regards Sagu tenure. The Jamma Bane land was not held to belong to the tenure holder but belonged to the Government. The bane land being appurtenant to the Jamma land or the Sagu land were used for incidental purposes. Subsequently, with the introduction of coffee,

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NC: 2024:KHC:29383 AND 1 OTHER when the land was sought to be cleared for growing coffee i.e., when the lands were being disposed to coffee planters and it is in that background, that certain Rules were introduced permitting the Jamma Bane land to be used for coffee cultivation provided no large trees were removed.

16.4. Section 189 of Rob Cole's Manual deals with what constitutes a division and prescribes that a member is not to be considered as divided on the simple execution of a deed but he must have taken a share and lived apart. 16.5. Thus, even as per Rob Cole's manual, a division of family is permitted. In terms of Section 192 of Rob Cole's Manual, if a division has taken place, ceremonies are performed by the divided member in his own residence. This again indicates that division was permissible.

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NC: 2024:KHC:29383 AND 1 OTHER 16.6. From the above, it is seen that the classification of the land is on the basis of the land tenure system and not on the basis of customs or usage of Kodavas as sought to be contended by Ms. Sarojini Muthanna, learned counsel for the Petitioners.

16.7. In that view of the matter, the concomitance of the land tenure system would equally apply to Jamma Bane land and not only the customs and traditions.

16.8. Thus, I answer Point No.2 by holding that non-

alienation of the Jamma Bane land and the said land going along with the Jamma land is a concomitance of the land revenue system and not based on customary practice.

17. Answer to Point No.3: Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of any

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NC: 2024:KHC:29383 AND 1 OTHER customary practice, usage or tradition of the Kodava race?

above, having come to a conclusion that there is no such essential customary practice requiring that alienation of a joint family property is prohibited and having come to a conclusion that the permission which is required to be obtained under the earlier CLRR and now the KLRR by a member of a Kodava family to alienate a property is a condition of land tenure, I am of the considered opinion that by way of the amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, there is no violation of any customary practice, usage or tradition of the Kodava race. 17.2. The decision in Kerala Education Bill, 1957 was one relating to minorities and the definition thereof in terms of Article 25, 26, 29 and 30 of

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NC: 2024:KHC:29383 AND 1 OTHER the Constitution of India with reference to educational institutions and the fees collected therein. The said decision would not in my considered opinion be applicable to the present case. The customs and traditions which were considered in the Kerala Education Bill matter was for the purpose of determination of who is a minority and not otherwise.

17.3. The decision in Virendra Nath Gupta's case also dealt with a linguistic minority institution on the basis of the Article 29 and 30 of the Constitution of India. The same would also have no bearing in the present matter for the same reason mentioned above.

17.4. The concept of privileged and unprivileged tenure is also explained hereinabove. Privileged is when no assessment is required to be paid and unprivileged is one where assessment is

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NC: 2024:KHC:29383 AND 1 OTHER required to be paid for usage by the Kodavas. By way of the amendment, the distinction between privileged and unprivileged has also been removed. The Jamma land which had been alienated earlier continues to be under the ownership of the respective purchaser who if a Kodava or not, would have obtained necessary rights of ownership.

17.5. By way of the amendment, even the unalienated land would now vest in the family as full ownership. Thus, I am of the considered opinion that this is a benefit which is provided to the members of the Kodava race and by virtue of amendment to sub-section (20) of Section 2, full ownership right as an 'Occupant' is granted to the members of the Kodava race and/or the family

owning the Jamma Bane land, privileged or unprivileged. The amendment to sub-section (20) of Section 2 being a beneficial

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NC: 2024:KHC:29383 AND 1 OTHER amendment conferring full ownership rights cannot be said to be in violation of the customs, traditions and/or practices.

17.6. The customs and practices that Smt. Sarojini Muthanna, learned counsel for the Petitioners has contended is as regards to common usage of the land belonging to the family, common ownership of the said land and there being an embargo on partitions being effected among the family members.

17.7. The amendment per se does not in any manner deviate from the above rights. The amendment does not require members of a Kodava family to execute a partition deed and/or produce a survey sketch alienating the partition among the family members. Insofar as this contention is concerned, an affidavit has been filed by the Under Secretary to the Revenue Department

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NC: 2024:KHC:29383 AND 1 OTHER stating that there would be no requirement to produce a partition deed or a survey sketch/11- E sketch for entry of the name of a family member in the revenue records so long as the family tree and/or documents evidencing that the person is belonging to that family is produced, the name of such person would be entered in the revenue records. This would answer the apprehension on part of the Petitioners inasmuch as the Under Secretary, Revenue Department, has categorically stated on oath that no partition deed is required nor is a survey sketch/11-E sketch required to be produced.

17.8. It is only on the basis of requirement to produce the same that it has been contended that the customs, traditions and practices of the Kodavas are violated by the amendment. If there is no requirement to produce partition

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NC: 2024:KHC:29383 AND 1 OTHER deed and/or survey sketch/11-E sketch, the question of any customs or traditions being violated would not arise.

17.9. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General and as per the affidavit of the Under Secretary, Revenue Department, there being no requirement of a partition to be effected and/or survey sketch or a 11-E Sketch being required to be furnished by way of the amendment, the property continues to be that of the joint family , and there would be no division of the property by virtue of the amendment simplicitor. The choice of continuing to be part of the joint family and for the property to be continued as a joint family property is that of the joint family members. The amendment per se does not require any such partition. Thus, there would be no

violation of customary law or Section 45 of

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NC: 2024:KHC:29383 AND 1 OTHER CLRR which is also now part of the Land Revenue Act.

17.10. Insofar as the submission that in the joint family properties, there are Kaimadas [temple for ancestors] and Thutengalas [family graveyard] which are to be enjoyed by all the members of the family. Firstly, as afore observed, there would be no partition by way of the amendment. Secondly, even if the members of the family wish to partition, suitable arrangements could be made insofar as Kaimada and Thutengala are concerned. That being a private arrangement between the private parties, the amendment cannot be questioned in that regard. The amendment does not force anyone to partition the properties, more so the Kaimada or the Thutengala. In the event of a partition suit being filed all contentions as are available can be raised.

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NC: 2024:KHC:29383 AND 1 OTHER 17.11. The exemption granted from making payment of taxes being primarily on the requirement of persons of the Kodava race to render military service to the Raja whenever called upon and now there being no such requirement, the claim for non-payment of tax would not survive, nor can it be countenanced in fact or law. By virtue of the amendment under sub-section (20) of Section 2, full ownership of the property is granted to the family, whereas under the Raja and/or the British, it was only a tenure in terms of the 'Jamma' tenure of bane lands which had been granted.

17.12. Now with full ownership of the land, an obligation for making full payment of taxes on the said land now fully owned by the family. This obligation cannot, in my considered opinion, be sought to be negated by relying on

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NC: 2024:KHC:29383 AND 1 OTHER the historical aspect of forced military service by members of the Kodava race.

17.13. The distinction sought to be made out by her in respect of privileged and unprivileged tenure would also no longer survive for consideration in view of the full ownership of land being granted by way of the amendment to sub- section (20) of Section 2.

17.14. The aspect of privileged or unprivileged tenure would have been necessary for consideration so long as the land was under a tenure and not under the full ownership. The tenure land could be alienated or unalienated. Alienated land could be used for growing coffee and unalienated land would continue to be used for activities incidental to agriculture. 17.15. Even though the alienated Jamma land less than 10 acres was free from assessment and

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NC: 2024:KHC:29383 AND 1 OTHER only land in excess of 10 acres would be assessed and tax payable, I am of the considered opinion that even the alienated Jamma land which continued to be owned by the Government and not by the family and now the land being owned by the family, such distinction of alienated or unalienated, privileged or unprivileged lands would not enure to the benefit of the Petitioners. 17.16.Insofar as the submission that partition would be a resultant of the rights conferred on individual members of the family which would lead to the breaking down of the Kodava family system and their customs or commercialization which would have an impact on the environmentally sensitive region, I am of the considered opinion that the use of the land would be regulated by the appropriate statute applicable thereto and any 'permission',

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NC: 2024:KHC:29383 AND 1 OTHER 'sanctions' or 'no objection' which are required for the utilisation of the land for commercial purposes, which may have an impact on the environment, would have to be adhered to and complied with by any and all members of the family.

17.17.The decision in Zoroastrian Cooperative Housing Societies' case is invoked to contend that a restriction amongst the Kodava race by custom, in respect of alienation of the property except within the patrilineal clan would be valid and that the same is taken away by amendment to sub-section (20) of Section 2 would also not be sustainable. Inasmuch as the said decision was rendered in the background of the fact that all the qualifications of a person to become a member of the society, the bye-laws mandating that it is only a member of Zoroastrian faith who could become the

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NC: 2024:KHC:29383 AND 1 OTHER member of the cooperative society and further impose restriction on alienation of the property to a person otherwise than belonging to the Zoroastrian faith. In that decision, persons had become members of the society voluntarily, accepted the terms and conditions and bye-laws of the society and therefore, the Hon'ble Apex Court came to a conclusion that all members are bound by the bye-laws of the society. 17.18.In the present case, though there may be a custom or a usage among the Kodava race not to partition the property, the same is a personal property right of the members of the Kodava race who may choose to partition or not, the joint family properties. The decision in Zoroastrian Cooperative Housing Societies' case would therefore not be applicable to the present facts and circumstances.

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NC: 2024:KHC:29383 AND 1 OTHER 17.19.The reference to DAV College Jalandhar's case for ascertaining linguistic minorities would also be of no assistance or relevance in the present matter. The amendment to sub-section (20) of Section 2 is not one based on linguistic minority, but as regards the nature of the Jamma Bane Land in Coorg, to either be owned by persons of the Kodava race or by persons belonging to any other community. 17.20.The impugned amendment is not made

with reference to a person belonging to the Kodava race or otherwise and as such, whether the members of the Kodava race would constitute a separate linguistic minority or not would not be relevant for the purpose of consideration in this matter.

17.21.Article 51(A) of Part-IV is reproduced hereunder for easy reference:-

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NC: 2024:KHC:29383 AND 1 OTHER 51A. Fundamental duties.--It shall be the duty of every citizen of India--

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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NC: 2024:KHC:29383 AND 1 OTHER 17.22.The reference to Article 51(A) of the Constitution of India being a duty cast on the State to preserve the heritage of our composite culture and the

invocation thereof to contend that the family traditions of the Kodava race, which is the culture of the Kodavas, in order to maintain their heritage, would also have no bearing in the present matter, since by way of the amendment, there is no violation of any culture or heritage. By way of the amendment, only the ownership rights are provided to the family.

17.23. It is for the members of the family to protect and preserve the rich heritage and culture of the family and the Kodava race. Merely by way of the impugned amendment, it cannot be stated that the State has violated its duty to preserve the rich heritage of the composite culture of the Kodava race.

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NC: 2024:KHC:29383 AND 1 OTHER 17.24. A submission is made that Jamma Bane lands are not government lands. It never belonged to the Raja or the British and the British did not hand it over to the Republic of India and as such, it is contended that the land would continue to be a private property and on that basis it is contended by relying upon Article 294

(b) of the Constitution of India that there is a duty cast upon the State to preserve these private properties with regards to the customs and traditions followed. Article 294 (b) of the Constitution of India only speaks of the rights, liabilities and obligations of the Government of the domain of India and the Government of each Governors' Province to be that of the Government of India and the Government of each corresponding States.

17.25. There is no such obligation contractual or otherwise, requiring the State to continue the

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NC: 2024:KHC:29383 AND 1 OTHER tenure of the land as Jamma Bane land so as to invoke Article 294 (b) of the Constitution of India. Similarly, Section 6 of the Karnataka General Clauses Act, 1989, which deals with repeal of any enactment, would also not be applicable since there is no repeal which has occurred. It is an amendment made in order to provide full right, title and interest in the property to members of the Kodava joint family.

17.26. The decision in Sardar Syedna Taher Saifuddin Saheb's case was one rendered in a situation where excommunication was permitted both as a punishment as also for preservation of religious denomination and it is in that background that it is held that the same is protected under Article 25 and 26 of the Constitution of India and the same cannot be questioned. That was a challenge made

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NC: 2024:KHC:29383 AND 1 OTHER specifically as regards power to excommunicate for self-preservation of religious denomination. In the present case, it cannot be said that the amendment to sub-section (20) of Section 2 would not preserve any religious denomination and/or bring about a division in the denomination which are already adverted to above. Hence, the decision in Sardar Syedna Taher Saifuddin Saheb's case would also not be applicable to the present facts.

17.27.In view of the above discussion, it is clear that by way of the amendment what is achieved is, to grant full ownership of the land to the Kodava family including all division holders i.e., all members of the family in a land which earlier had stood vested in the Government and the Government was the owner thereof. This conferment of full ownership in my considered opinion cannot be said to be in violation of any

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NC: 2024:KHC:29383 AND 1 OTHER custom, tradition or usage of the Kodava community.

17.28.As such, I answer point No.3 by holding that by way of the impugned amendment to subsection (20) of Section 2 and amendment to Section 8o of KLRA, 1964, there is no violation of any customary practice, usage or tradition of the Kodava race.

18. Answer to Point No.4: Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled? 18.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners in regard to this aspect is that a law cannot override any custom, usage or tradition. The answer to this has already been provided by Hon'ble Apex Court Adithayan's case and Animal Welfare Board of India's case, which would clearly and

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NC: 2024:KHC:29383 AND 1 OTHER categorically indicate that it is the Legislative enactment, which would have to be given effect to and that the same would override any customary practice, which had been prevalent and accepted for a long period of time. It is the Legislature, which is supreme and by way of legislative enactment any particular custom can be overridden, prohibited or regulated. Such overriding of a custom will not be a ground to challenge the legislation.

18.2. The grounds of challenge of a legislation have been detailed hereinabove and laid down by the Hon'ble Apex Court in many cases. An alleged isolation of custom is not a valid ground for such a challenge..

18.3. The above is also countenanced by several other enactments which have been enacted to get over certain social ills like dowry, child

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NC: 2024:KHC:29383 AND 1 OTHER marriage, etc. Though these were customs and traditions followed by different communities, by introduction of the Dowry Prohibition Act as also by introducing Section 498A into the erstwhile Indian Penal Code and now Sections 85 & 86 of the Bharatiya Nyaya Sanhita (for short, 'BNS'), the demand for dowry not only has been prohibited but has also been made a criminal offence.

18.4. Section 494 of the erstwhile IPC and now Section 82 of the BNS, criminalises bigamy. Bigamy also was a custom practiced by many. 18.5. By introducing the Prohibition of Child Marriage Act, 2006, marriage of a child/minor has been prohibited and criminalised.

18.6. Prior to the introduction of said enactment, child marriage was very much in vogue. Thus, all these enactments have been brought about

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NC: 2024:KHC:29383 AND 1 OTHER to bring about a social change, to overcome the social ills and to ostracize and/or criminalise certain practices which are contrary to the rights guaranteed under Part III of the Constitution of India.

18.7. These enactments though have done away with certain customs, usage or traditions by overriding, prohibiting or cancelling them have been held to be valid.

18.8. I answer Point No.4 by holding that by way of introducing a new enactment or by way of amendment to an already existing enactment, certain customs, usage or traditions as prevalent then, can be overridden, prohibited or cancelled by such a new enactment or amendment to an existing enactment.

19. Answer to Point No.5: Is the amendment made to Subsection (20) of Section 2 valid or not?

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NC: 2024:KHC:29383 AND 1 OTHER 19.1. Certain arguments have been advanced contending that this Court in Cheekere Poovaiah's case has not considered the customary rights and religious practices of the Kodavas and as such, the said judgment is not correct. The judgement in Cheekere Poovaiah's case having been rendered by the Full Bench of this Court, the said judgment would be binding not only on this Bench but also on the Petitioners. The said judgement having attained finality and no challenge having been made thereto.

19.2. Though in Cheekere Poovaiah's case, mineral rights and sub-soil rights were considered, the basic consideration of the matter was on account of the privileged and unprivileged Jamma Bane land as also the alienated and unalienated Jamma Bane land. The aspect of sub-soil rights and mineral rights was

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NC: 2024:KHC:29383 AND 1 OTHER considered in respect to payment of royalty to the Government. The rights of the Government as regards privileged and unprivileged Jamma Bane land as also alienated and unalienated Jamma Bane lands having been held to be vested with the State and the said properties having been held to be government land, it cannot now be contended by the Petitioners that the said judgment would only apply insofar as mineral rights or subsoil

rights. 19.3. In my considered opinion the said judgment would apply to all Jamma Bane lands as classified above. Be that as it may, as submitted by the learned Additional Advocate General, it is in order to provide full rights in the property which in Cheekere Poovaiah's case was held to be not available to the holder of Jamma Bane land, that the present amendment has been brought about. Thus,

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NC: 2024:KHC:29383 AND 1 OTHER even on this ground, the entire family becoming the owner of the land, the question of any of the rights of the member of a Kodava family being impinged upon does not arise. 19.4. As observed above, in answer to the earlier questions, as also in answer to the present question, by way of amendment of sub-section (20) of Section 2, what is sought to be achieved is grant of full ownership of land to the family and the members of the family. In effect, by way of amendment of sub-section (20) of Section 2, ownership rights are conferred on the occupant. This conferment of ownership rights is over and above the existing rights. It does not in any manner take away any right vested in the individual or the family. There is no disadvantage that the said amendment puts upon the family or any individual member of the family. The amendment to sub-section (20)

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NC: 2024:KHC:29383 AND 1 OTHER of Section 2 does not in any manner violate or impinge upon the rights guaranteed under Chapter 3 of the Constitution. In fact, by way of such amendment, full ownership rights have been granted.

19.5. There is equality brought about between the Kodavas and other occupants of the land inasmuch as the Kodavas could not have filed an application for regularization or grant of occupancy rights as regards Jamma Bane land prior to the impugned amendment. Whereas persons residing in other parts of the State could make application for grant of occupancy rights as regards the land which they were in occupation of in an authorized or unauthorized manner.

19.6. Thus, I answer Point No.5 by holding that the amendment of sub-section (20) of Section 2 is

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NC: 2024:KHC:29383 AND 1 OTHER not violative of any law. Therefore, it has to be held to be valid and in accordance with law.

20. Answer to Point No.6: Is the amendment to Section 8o of the Karnataka Land Revenue Act valid or not?

20.1. The contention Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the amendment to Section 8o, the Kodavas would now have to make payment of taxes/land revenue/land assessment as regards the Jamma Bane land which they were not paying earlier on

account of the tenure of the said land having recognized as a custom and as such, requiring the payment of taxes would be to the detriment of the Kodavas.

20.2. The amendment to Section 80 of the KLRA is in furtherance of the amendment made to sub-section (20) of Section 2 of the KLRA. By way of amendment to sub-section (20) of Section 2,

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NC: 2024:KHC:29383 AND 1 OTHER full ownership rights have been provided for. It is only prior to the grant of full ownership that the land was not fully assessed to tax. That is to say, by recognizing a concomitant of the land tenure, whereunder the land owner namely a Kodava was required to make payment of half the assessment in view of the military services required to be offered to the king. The condition of recognition of the land tenure and the condition for being eligible for reduced assessment was the requirement of the Kodava to provide military services to the King. As regards the land over which full ownership was not granted by the King to the Kodava or his family.

20.3. By way of amendment to sub-section (20) of Section 2 of the KLRA, firstly, full ownership rights have been granted to a Kodava family as regards the land owned by them and they

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NC: 2024:KHC:29383 AND 1 OTHER would be entitled to the usage of the said land as a full owner.

20.4. Secondly, the earlier condition for rendering military services is no longer in existence, since now, the recruitment made to any of the armed forces is on the basis of examination and selection process and not merely on the basis of holding the land as a Jamma Bane.

20.5. The decision relied upon in this regard in the Kunnathat Thatehunni Moopil Nair's case would also not enure to the benefit of the Petitioners. It was a case where the tax imposed was held to be violative of Article 19(1)(F) of the Constitution of India since the quantum of tax imposed was many times over the income from the forest land. That case was a challenge as regards the quantum and imposition of unreasonable restriction, which

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NC: 2024:KHC:29383 AND 1 OTHER could amount to being confiscatory in the event of default in making payment of taxes. That would not be the case here. The assessment of the land being on an agricultural basis, it is not the contention of any of the Petitioners that the said assessment is more than the income that could be earned.

20.6. By relying on Threesiamma Jacob's case, it is contended that the Hon'ble Apex Court has held that there is nothing in law which declares that all mineral wealth sub-soil rights vest in the State and further, ownership of sub-soil/mineral wealth should normally follow the ownership of the

land, unless the owner of the land is deprived of the same by some valid process. Relying on the same, it is submitted that Threesiamma Jacob's case impliedly overruled Cheekere Poovaiah's case insofar as the mineral rights are concerned. Even if

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NC: 2024:KHC:29383 AND 1 OTHER that may be, without expressing any opinion on the same, even if Cheekere Poovaiah's judgement were said to be overruled, the same would not enure to the benefit of the Petitioners insofar as the challenge to the amendment to sub-section (20) of Section 2 and amendment to Section 80 are concerned, since neither of these two amendments relate to any mineral or subsoil rights.

20.7. Even if the judgement in Threesiamma Jacob's case can be said to have overruled the observations made by the Full Bench of this Court in Cheekere Poovaiah's case as regards to subsoil and mineral rights, the basis of Cheekere Poovaiah's case is not taken away inasmuch as the finding in Cheekere Poovaiah's case that Jamma Bane land is government land and not individual personal property. That finding continues to hold the

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NC: 2024:KHC:29383 AND 1 OTHER field and has not been distinguished or overruled in Threesiamma Jacob's case. 20.8. By relying upon the decision in Rakesh Kohli's case, the learned Additional Advocate General has contended that it is only if a statute or amendment has been enacted without legislative competence or is in violation of any of the fundamental rights guaranteed under Part III of the Constitution of India that enactment can be struck down.

20.9. Even as regards a challenge under Article 14 of the Constitution of India when made, what the Court would have to see is whether the Act or amendment is violative of the equality clause or equal protection clause enshrined therein. His submission is that an enactment cannot be struck down by only stating that it is arbitrary or unreasonable. The same would have to be

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NC: 2024:KHC:29383 AND 1 OTHER established to be violative of the fundamental rights guaranteed under Part-III of the Constitution and only then, such a statute could be quashed and, on that basis, it is contended that the Petitioners have not been able to establish and/or satisfy this requirement. 20.10. The said decision of the Hon'ble Apex Court would answer the contention raised by Smt. Sarojini Muthanna, learned counsel for the Petitioners contending that the amendment is arbitrary and unreasonable on the ground that by way of the amendment a member of the Kodava family is now required to partition the property in order to make an entry of his name in the revenue records. Therefore, it is contended that it is unreasonable. The first aspect of requirement of partition and/or 11-E sketch having been dealt with hereinabove, if that aspect is eschewed, then the entire

- 210 -

NC: 2024:KHC:29383 AND 1 OTHER arguments of Smt. Sarojini Muthanna insofar as the impugned amendment being arbitrary or unreasonable, would not stand.

20.11. It is clear from the reading of the judgements of the Hon'ble Apex Court in Rakesh Kohli's case, Ashoka Kumar Thakur's case, Binoy Viswam's case and Jaya Thakur's case that the scope of challenge to an act of legislation is limited. It is required for the person challenging an enactment or amendment passed by the legislature to establish that the said legislature did not have the competency and/or that the legislation is violative of Part-III of the Constitution of India. If a legislature had a competence to pass an enactment or an amendment, then, there would be no further requirement. It is only thereafter, that the aspect of whether there is a violation of rights guaranteed under Part-III of the Constitution of

- 211 -

NC: 2024:KHC:29383 AND 1 OTHER India can be made. In the present case, there is no challenge to the competence of the legislature, but the challenge is only on account of the amendment allegedly violating fundamental rights, customs and tradition. 20.12. In view of my above reasoning, I answer Point No.6 by holding that the amendment to Section 8o of the KLRA is not violative of any constitutional provisions or any law and therefore is a valid law.

21. Answer to Point No.7: What is the effect of the impugned amendment?

21.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the impugned amendment, firstly, there will be a breakup in the joint family system. Secondly, the properties will be alienated. Thirdly, as a consequence of both the above,

- 212 -

NC: 2024:KHC:29383 AND 1 OTHER the customs and traditions of the Kodava race would be violated.

21.2. The decision in B. Mohammad's case, relied upon in this regard, would also not enure to the benefit of the Petitioners, since by way of the amendment no right is taken away, but a right of full ownership is conferred upon the Kodava family as regards the lands owned by them. The corresponding obligation being payment of assessment/taxes. The ownership right now conferred retrospectively, but the obligation on payment of taxes/assessment being prospective, i.e., from the date on which the amendment came into operation , the decision in B. Mohammad's case which relates to the retrospective amendment would not apply. 21.3. The decision in Kongera T. Appanna's case was one relating to the determination of cost of

- 213 -

NC: 2024:KHC:29383 AND 1 OTHER timber wherein it was held that the timber on Jamma Bane land belongs to the Government and ratable distribution of the cost of timber was ascertained in the said matter. By virtue of the amendment, once the Kodava family is granted full ownership of the land. The ownership of the timber, standing trees, etc., on the said land will also vest with the said family/individual. That being so, the Government will not have any right, title or interest in the timbers, standing trees or otherwise on the said property requiring the calculations. Once the right of the family or occupant are registered pursuant to sub-section (20) of Section 2, the entire process of calculation of timbers, trees or otherwise situated in the Jamma Bane land, permission for their sale and appropriation of the amounts

- 214 -

NC: 2024:KHC:29383 AND 1 OTHER thereof would no longer be required, unless any other statutory provision mandates so. 21.4. One other effect of the amendment would be that with the full ownership of the land being vested with the family, the Government would not have any right, title or interest over the said property.

21.5. All the trees situated thereon and produced thereof would vest with the owner of the land. The question of the Government claiming any seigniorage or the like, as regards the trees grown on the said land would not arise. Any permission required by the family or its members for cutting any specific trees would necessarily have to be obtained and the procedure and formalities related thereto be adhered to. However, the State cannot claim

- 215 -

NC: 2024:KHC:29383 AND 1 OTHER any ownership of anything grown on the said land.

21.6. In view of my answers to the earlier points, having come to a conclusion that the entire family will be registered as an occupant of the Jamma Bane land, I am of the considered opinion that by way of the amendment, there will be no requirement of partition to be effected among the members of the family. This is also borne out by the affidavit filed by the Under Secretary to the Revenue Department, Government of Karnataka, wherein it is categorically stated that for the purpose of registration of the name of a family member in the RTCs, there would be no requirement for a partition to be effected and/or for 11-E sketch to be obtained as regards the area falling to the share of each individual family members.

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NC: 2024:KHC:29383 AND 1 OTHER 21.7. By way of amendment, what is now only achieved is that the entire family would be registered as the occupant of the land including Jamma Bane land. The names of all the members of the family would also be entered into in Column No.9 thereby recognizing the rights of the entire family in respect of the property owned by the family including Jamma Bane land.

21.8. Whether they partition or not, whether they continue as a single united family or not and in the event of a partition being effected, which portion of the property would come to which member of the family and the rights of each member of the family to offer prayers to their ancestors as also to be buried/cremated in the family property are not matters which are covered by the amendment. These are aspects which are best left to the wisdom of the family

- 217 -

NC: 2024:KHC:29383 AND 1 OTHER and its members. If all the members want to continue to be joint, the family could continue as a joint family property exercising ownership rights over the entire property. If any member of the family were to want to separate, the same would have to be so done in accordance with an agreement between the parties or in accordance with law since the Kodavas are governed by the Mitakshara branch of the Hindu law and as such, would be governed by the Hindu Succession Act, 1956 as amended from time to time.

21.9. Ultimately the effect of the impugned amendment is to confer full ownership rights over the Jamma Bane land and does not in any manner compel any member of the family to partition/separate himself or herself from the family and/or for the property to be divided by metes and bounds.

22. Answer to Point No.8: What order?

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NC: 2024:KHC:29383 AND 1 OTHER 22.1. In view of my answer to all the points above, I do not find the amendment to be violative of any law, let alone the Constitution of India. The grounds of challenge made to the said amendment, therefore, fail. The Petition stands dismissed.

22.2. The concerned District Administration/District Revenue Authority is hereby directed to issue a circular giving clarity and stating in detail the due process for entering the names of the joint family land owners into the revenue records vis-à-vis the amendment to Sub-section 20 of Section 2 of the Karnataka Land Revenue Act, 1964. The same to be complied with, within 30 days from the date of receipt of this order.

Sd/-

JUDGE PRS

Sri Nagesh Kumar G vs Smt Ranjitha N on 6 August, 2024

Author: Mohammad Nawaz

Bench: Mohammad Nawaz

- 1 -

NC: 2024:KHC:31327
CRL.P No. 9949 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO. 9949 OF 2023

BETWEEN:

1. SRI NAGESH KUMAR G.,
S/O GANGAPPA N,
AGED ABOUT 30 YEARS
2. SRI GANGAPPA N
S/O LATE NARASHIMAIAH
AGED ABOUT 65 YEARS
3. SMT MAHADEVAMMA
W/O GANGAPPA N
AGED ABOUT 54 YEARS,
PETITIONERS NOS.1 TO 3 ARE
RESIDING AT NO.367,
NEAR GANGAMMA TEMPLE
CHIKKABANAVARA
BENGALURU-560 090.
4. SMT. SHAKUNTALA.G
W/O K.G. SRINIVAS
AGED ABOUT 37 YEARS
NOW R/AT NO.478,
NEAR GANGAMMA TEMPLE
CHIKKABANAVARA
BENGALURU-560 090

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

5. SMT. SHASHIKALA G,
D/O GANGAPPA N,
-2-

NC: 2024:KHC:31327
CRL.P No. 9949 of 2023

AGED ABOUT 33 YEARS,
R/AT NO.170, NEAR BUS STOP,
CHIKKABANAVARA
BENGALURU-560090

6. SRI K.G.SRINIVAS
S/O GIRIYAPPA
AGED ABOUT 43 YEARS
R/AT NO.464/1,
NEAR GANGAMMA TEMPLE
CHIKKABANAVARA,
BENGALURU-560 090

...PETITIONERS

(BY SRI VIJAYA KUMAR K., ADVOCATE)

AND:

1. SMT. RANJITHA N
W/O NAGESH KUMAR G
AGED ABOUT 26 YEARS
2. KUM IVAMSHI N.,
D/O NAGESH KUMAR G
AGED ABOUT 2 YEARS

RESPONDENT NO.2 IS A MINOR
REPRESENTED BY HER MOTHER AND
NATURAL GUARDIAN SMT. RANJITHA N.,

BOTH ARE R/AT C/O NAGARAJ A.D
BAVIHATTI AGRAHARA, WARD NO.4,
NARASIMHARAJAPURA TALUK,
CHIKKAMANGALURU DISTRICT-577134

...RESPONDENTS

(BY SRI PRASAD K.R. RAO, ADVOCATE R1;
R2 MINOR REP. BY R1)

-3-

NC: 2024:KHC:31327
CRL.P No. 9949 of 2023

THIS CRIMINAL PETITION FILED UNDER SECTION 407
OF CR.P.C PRAYING TO TRANSFER THE CRL.MISC.NO.32/2023
UNDER SECTIONS 12, 18, 19, 20, 21, 22F OF PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT 2005 (ANNEXURE A)
FILED BY THE RESPONDENT PENDING ON THE FILE OF THE
CIVIL JUDGE AND JMFC AT NARASIMHARAJAPURA TO ANY
ADDITIONAL METROPOLITAN MAGISTRATE COURT AT
BENGALURU BY ALLOWING THIS PETITION.

THIS PETITION COMING ON FOR ADMISSION THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE MOHAMMAD NAWAZ

ORAL ORDER

This petition is filed under Section 407 of Cr.P.C praying to transfer Crl.Misc.No.32/2023 pending on the file of Civil Judge and JMFC at Narasimharajapura, Chikkamagalur to any Additional Metropolitan Magistrate Court at Bengaluru.

2. It is contended that the petition filed by respondent No.1 against the petitioners, is only in order to harass them, who are residing in Bengaluru and they have to travel more than 320 Kms., to reach Narasimharajapura. Further, Petitioner No.1 is suffering NC: 2024:KHC:31327 from low back pain radiating to left lower limb etc., and he has been advised to avoid long journey. The petitioner Nos.2 and 3 are senior citizens, also suffering from age related ailments. Petitioner Nos.4 to 6 are not related, but intentionally they are also arrayed as parties.

3. The learned counsel appearing for respondent has opposed the prayer for transfer of the case contending that M.C.No.194/2023 filed by the husband seeking divorce which was pending before VIII Addl. Prl. Senior Civil Judge, Bengaluru Rural District, Bengaluru has been transferred to the Court of Senior Civil Judge and JFMC, Narasimharajapura, by this Court in C.P.No.293/2023 preferred by the wife and now, both the cases are pending before the Senior Civil Judge and JMFC, Narasimharajapura.

4. I have perused the copy of the order passed in C.P.No.293/2023 disposed on 19.07.2024. The said petition filed by respondent No.1 seeking transfer of M.C.No.194/2023 filed by petitioner No.1 for divorce was allowed by this Court and M.C.No.194/2023 was NC: 2024:KHC:31327 transferred from the Court of Senior Civil Judge, Bengaluru Rural to the Court of Senior Civil Judge and JMFC, Narasimharajapura wherein, the present Crl.Misc.No.32/2023 filed by the respondents under Section 12 of Protection of Women from Domestic Violence Act, 2005 is pending.

5. It is relevant to extract paragraph No.9 of the order passed in Civil.P.No.293/2023:

" 9. Since the respondent-husband is suffering from backache and has been advised not to travel long distances, to protect his interest, the Court to which the proceedings are transferred shall permit the respondent- husband to participate through video conferencing facility ".

6. The same benefit can be granted to the petitioner as observed in the above paragraph even in the present case. The Court shall permit the petitioner/husband to participate through video conferencing facility.

NC: 2024:KHC:31327

7. It is submitted by the learned counsel for petitioners that in so far as petitioner Nos.2 to 6 are concerned, the proceedings against them have been stayed by this Court in Crl.P.No.8012/2023. Hence, it is needless to say that the proceedings against them will be subject to the result of the said petition.

8. With the above observation, the petition is dismissed.

Sd/-

(MOHAMMAD NAWAZ) JUDGE RHS

Sri Sathya Murthy vs Smt M Preethi on 22 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:28401
CRL.P No. 4929 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 4929 OF 2021

BETWEEN:

1. SRI SATHYA MURTHY,
AGED ABOUT 69 YEARS,

2. SMT. SATHYAVANI,
W/O SATHYA MURTHY,
AGED ABOUT 61 YEARS,

PETITIONER NOs.1 AND 2 ARE
RESIDING AT NO.83, JAIN TEMPLE STREET,
ANDERSON POST, KGF,
KOLAR - 563 113.

3. SMT. SELVA KUMARI,
W/O SHIVAPPA,
AGED ABOUT 46 YEARS,
R/A NO.21, 8TH MAIN,
4TH CROSS, DASARAHOSAHALLI EXTENSION,

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA

KUVEMPUNAGAR EXTENSION,
DODDURKARPANAHALLI,
KOLAR - 563 162.

4. SMT. TARA BAI,
W/O ELANGOVAN,
AGED ABOUT 44 YEARS,
R/A NO.17, VELARIAMMAN TEMPLE STREET,

VANNARPET, VIVEKNAGAR,
BENGALURU - 560 047.

5. SMT. DEEPA,
W/O DEENA DAYALAN,
AGED ABOUT 41 YEARS,

-2-

NC: 2024:KHC:28401
CRL.P No. 4929 of 2021

R/A M.K. PARADISE,
MALLIKARJUNA NAGAR,
HUBLI - 580 020.

...PETITIONERS

(BY MS. SUNANTHA SAHUKAR, ADVOCATE FOR
SRI. RAHUL S. REDDY, ADVOCATE)

AND:

1. SMT. M. PREETHI,
D/O LATE MUNISWAMY,
W/O S. PURUSHOTHAMAN,
AGED ABOUT 34 YEARS,
2. MASTER JAYANTH P.,
S/O S. PURUSHOTHAMAN,
AGED ABOUT 3 YEARS,

RESPONDENT NO.2 IS A MINOR AND IS WITH
HIS MOTHER AND NATURAL
GUARDIAN RESPONDENT NO. 1,

RESPONDENT NOS.1 AND 2 ARE RESIDING AT
NO.910, CHINNASWAMY MUDALIAR COMPOUND,
4TH BLOCK, NEAR TVS SHOWROOM,
ROBERTSON POST, KGF,
KOLAR - 563 122.

...RESPONDENTS

(BY SRI K.C. NAGARAJ, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C PRAYING TO QUASH THE PROCEEDINGS AGAINST
THE PETITIONERS IN D.V.C.NO.5/2020 FILED BY THE
RESPONDENTS UNDER SECTION 12 OF PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT ON THE FILE OF
SENIOR CIVIL JUDGE AND PRINCIPAL J.M.F.C., K.G.F. AT
KOLAR.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Learned counsel for petitioner No.3 seeks permission to withdraw the petition and he has filed a memo to that effect.

2. Memo is taken on record. In view of the above, the petition is dismissed as withdrawn.

Sd/-

JUDGE CPN CT: BHK

Sri. Srinivasa Murthy. V vs Smt. S. Vijayalaxmi on 18 July, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

- 1 -

NC: 2024:KHC:27819
CRL.P No. 11403 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL PETITION NO. 11403 OF 2023
BETWEEN:

SRI. SRINIVASA MURTHY. V
S/O. LATE VENKATARAMANACHAR,
AGED ABOUT 56 YEARS,
WORKING AS STENOGRAPHER,
KRISHNA BHAGYA JALA NIGAM LIMITED,
PWD OFFICES ANNEXE,
3RD FLOOR, K.R. CIRCLE,
BENGALURU-560 001.

RESIDING AT NO. 2198,
SRINIDHI KRUPA,

Digitally signed by

LAKSHMINARAYANA
MURTHY RAJASHRI

Location: HIGH
COURT OF
KARNATAKA

GREEN ROAD, OPP. TO BBMP PARK,
KUMARASWAMY LAYOUT,

2ND STAGE, BANGALORE SOUTH,

BANGALORE, KARNATAKA-560 078.

...PETITIONER

(BY SMT. NANDINI B.S., ADVOCATE FOR
SRI. HARIPRASAD M B., ADVOCATE)
AND :

SMT. S. VIJAYALAXMI
W/O. SRI. SRINIVASA MURTHY,
D/O. SHIVARAJAPPA,
AGED ABOUT 54 YEARS,
R/AT NO. 55, GANGADHAR NAGAR,
OPP. TO SARAKKI GATE,

KANAKAPURA MAIN ROAD,
J. P. NAGAR POST,
BENGALURU-560 078.

... RESPONDENT

-2-

NC: 2024:KHC:27819
CRL.P No. 11403 of 2023

(BY SRI. B C VENKATESH., ADVOCATE)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO TRANSFER THE PROCEEDINGS IN CRL.MISC.NO.111/2023 ON THE FILE OF THE LEARNED II ADDL.CIVIL JUDGE AND J.M.F.C MANDYA TO FAMILY COURT AT BENGALURU OR ANY OTHER JURISDICTIONAL COURT IN BENGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This appeal is filed by the petitioner -husband against the respondent -wife seeking transfer of Crl.Misc.No.111/2023 pending on the file of the II Additional Civil Judge and JMFC, Mandya to Family Court, Bengaluru or any other Court having jurisdiction.

2. The said transfer is sought on the ground that petitioner -husband and the respondent -wife both are residing at Bengaluru.
3. Learned counsel for the respondent submits that respondent -wife is residing in Bengaluru and further NC: 2024:KHC:27819 submits that he has no objections to transfer Crl.Misc.No.111/2023 pending on the file of the II Additional Civil Judge and JMFC, Mandya to Court at Bengaluru having jurisdiction.
4. The petition is filed under provision of the Protection of Women from Domestic Violence Act 2005 and therefore, the family Court has no jurisdiction to adjudicate the petition. Hence, it requires to be transferred to the Judicial Magistrate First Class (Traffic Court) Bengaluru City. In the result, the following ORDER

- i) In view of the above, the petition is allowed.
- ii) The Crl.Misc.No.111/2023 pending on the file of the II Additional Civil Judge and JMFC, Mandya is transfer to the Judicial Magistrate First Class (Traffic Court -II) Bengaluru City.

NC: 2024:KHC:27819

iii) The parties are directed to appear before the transferee Court on 27.08.2024 without awaiting any Court notice.

Sd/-

JUDGE DSP

Sri V R Somwanshi vs The Management Of on 2 August, 2024

Author: B M Shyam Prasad

Bench: B M Shyam Prasad

-1-

NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 2ND DAY OF AUGUST, 2024
BEFORE
THE HON'BLE MR JUSTICE B M SHYAM PRASAD
WRIT PETITION NO. 50964 OF 2012 (S-RES) C/W
WRIT PETITION NO. 35645 OF 2012
WRIT PETITION NO. 35646 OF 2012

IN WP NO. 50964/2012:

BETWEEN:

SRI. V.R.SOMWANSHI S/O. RAMRAO
AGED ABOUT 56 YEARS,
RESIDING AT NO.249, "INDIRA NIVAS",
NEAR BASAVA TEMPLE,
BASHTTIHALLI INDUSTRIAL AREA,
DODDAALLAPUR-561 203,
BANGALORE RURAL DISTRICT.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

Digitally signed
by VINAYAKA B V AND:
Location: HIGH
COURT OF
KARNATAKA
DHARWAD
BENCH

1. THE MANAGEMENT OF
DHARWAD
Date: 2024.08.14 KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
10:40:44 +0530

A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO.2479, BELLARY ROAD, HEBBAL,
BANGALORE-560 024.

2. THE MANAGING DIRECTOR

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024.

3. THE APPELLATE AUTHORITY

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024, BY ITS MEMBER.

... RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO,
QUASH THE ORDER OF TERMINATION ORDER DATED 25.1.06
VIDE ANNX-H PASSED BY THE R2 HEREIN
QUASH THE ORDER DATED 20.3.07 PASSED BY THE R2 VIDE
ANNX-A4; QUASH THE ORDER DATED 28.5.07 PASSED BY R2
VIDE ANNX-A6; QUASH THE SHOW CAUSE NOTICE DATED
29.6.07 PASSED BY R2 VIDE ANNX-A7
QUASH THE MINUTES OF THE CORPORATION MEETING
NO.201 DATED 21.11.11 OF THE R3 VIDE ANNX-A14.

IN WP NO. 35645/2012

BETWEEN:

T R SRINATH
S/O. LATE T N RAMAMURTHY,
AGED ABOUT 53 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, DODDABALLAPURA UNIT,
SINCE ILLEGALLY DISMISSED FROM SERVICE,
AND R/A NO.2479, BELLARY ROAD,
HEBBAL BANGALORE-560024.

. . PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN

-3-

NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

PRODUCTS LIMITED,
P.B.NO.2479, BELLARY ROAD,
HEBBAL, BANGALORE-560024.

2. THE MANAGING DIRECTOR
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

...RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 25.1.2006 & 25/27-01-07 UNDER
ANN-H AND N TO THE WP PASSED BY THE DISCIPLINARY
AUTHORITY & ORDER DATED 03.1.2012 PASSED BY THE
APPELLATE AUTHORITY COMMUNICATED TO THE PETITIONER
BY COMMUNICATION DATED 3.1.12 UNDER ANN-Q TO THE WP
BY ISSUE OF WRIT IN THE NATURE OF CERTIORARI & GRANT
ALL CONSEQUENTIAL BENEFITS.

IN WP NO. 35646/2012:

BETWEEN:

R. RAMESH RAO S/O. S. RAMADAS,
AGED ABOUT 56 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMTIED, MYSORE UNIT,
SINCE ILLEGALLY DISMISSED
FROM SERVICE, & R/A FLAT NO.1,
VISHAL APARTMENTS, NO.21,
MODEL HOUSE STREET,
BASAVANAGUDI, BANGALORE-560024.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR

-4-

NC: 2024:KHC:30778

WP No. 50964 of 2012

C/W WP No. 35645 of 2012

WP No. 35646 of 2012

SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.
2. THE MANAGING DIRECTOR
KARNAAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

. . . RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, QUASH THE ORDER DATED 25.1.2006 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACPL/MD/2005-06/3650 (UNDER ANNEXURE-K TO THE WRIT PETITION); ORDER DATED 25/27.1.2007 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACP/ADM/2854/06-07 (UNDER ANNX-R TO THE WRIT PETITION; AND ORDER DATED 3.1.2012 NO.KSACP/ADALITHANIRVAHANE /1240/2011-12 PASSED BY THE APPELLATE AUTHORITY (UNDER ANNX-T TO THE WRIT PETITION) BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI & DIRECT THE RESPONDENT BY ISSUE OF A WRIT IN THE NATURE OF MANDAMUS TO REINSTATE THE PETITIONER INTO SERVICE FORTHWITH WITH ALL CONSEQUENTIAL BENEFITS INCLUDING PAYMENT OF ALL BACK WAGES AND INCIDENTAL SERVICE BENEFITS THAT FLOW FROM QUASHING OF ANNEXURES-K, R & T AND ETC.

THESE WRIT PETITIONS, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

The petitioners have called in question the orders of the Disciplinary, Appellate Authorities and the orders of forfeiture, and one of the petitioners has also called in question show cause notices/ orders issued for forfeiture of certain alleged losses causes to M/s Karnataka State Agro Corn Products Limited [the Corporation]. The details of these impugned orders/ show cause notices are as follows:

Details of Details of the orders Details of the the writ of the disciplinary show cause orders of petition and appellate notices for forfeiture authorities forfeiture W.P.No. (i) Termination (i) Show cause The Order order No. notice bearing No. 50964/2012 KSACPL/ MD/ bearing No. KSACP/ADM/44 2005/ 06/3649 KSACP/ADM 1/07-08 dated [Sri.V.R. dated 25.01.2006 /3261/06-07 passed by the dated 28.05.2007 Somvanshi] Disciplinary 20.03.2007 (Annexure-AF) Authority [Annexure [Annexure-H]. AD]

(ii) The minutes of (ii) Show the Corporation cause Meeting No.201 notice dated 21.11.2011 bearing No. passed by the KSACP/ADM Appellate /SC/697/07 Authority -08 dated [Annexure-AP] 29.06.2007 [Annexure-

AG] W.P.No. (i) Order dated The show The order dated 25.01.2006 cause notice 25/27.01.2007 NC: 2024:KHC:30778 35646/2012 passed by the for forfeiture is in No. Disciplinary not impugned. KSACP/ADM/28 [R.Ramesh Authority in No. 54/06-07 Rao] KSACPL/MD/200 (Annexure-R) 5-06/ 3650 (Annexure-K)

(ii) Order dated 03.01.2012 No KSACP/ Adalitha Nirvahane/1240/ 2011-12 passed by the Appellate Authority (Annexure-T) W.P.No. (i) Order dated The show (i)The order 25.01.2006 cause notice dated 25/27-01-

35645/2012	passed by the for forfeiture is 2007 passed by Disciplinary	not impugned.	the Disciplinary
[Sri. TR	Authority in No.		Authority in No.
Srinath]	KSACPL/MD/200		
	5-06/365 (under Annexure-H to the Writ petition).	KSACP/ADM/28 55/06-07 [Annexure-N]	
	(ii) Order dated 03.01.2012 No. KSACP/Adalitha Nirvahane/1241/ 2011-12 [Annexure-Q].		

A brief statement of facts:

2. The petitioners were employed with the Corporation as Unit Heads. The Corporation, a State Government Undertaking incorporated for production and supply of supplementary/nutritious food for women in the family way and children below the age of six years, has established its food processing units in places such as NC: 2024:KHC:30778 Bengaluru, Belgaum, Mysuru, Chitradurga, Raichur and Doddaballapur. The Corporation contends that Food Specialists such as the petitioners are appointed as Unit Heads to oversee the function of these units and that given the expertise of these Food Specialists/ Unit Heads, they are vested with the full responsibility of ensuring quality of the supplemental and nutritious food to be provided to the women and children.

2.1 The Union Government's Integrated Child Development Scheme [ICDS] is also implemented through the Corporation. This scheme is inter alia to provide nutritious and fortified food [energy food/energy food mixes] to the beneficiaries through the concerned Anganwadi Centers. The Corporation has delivered wheat procured from Public Distribution System [PDS] to private millers to supply wheat rava to Anganwadi Centers. The Corporation contends that the Unit Heads, who were required to invite tenders from private millers, finalize contracts for supply of PDS Wheat and receive wheat rava, NC: 2024:KHC:30778 were also required to ensure quality and then supply the same to the Anganwadi Centers.

2.2 The State Government has appointed an Officer of the Indian Administrative Services Cadre [Sri R. B. Agwane] to investigate the reasons for complaints about lack of quality in the wheat rava supplied to the Anganwadi centers and the delay in supply as well. Sri R. B. Agwane has filed his report concluding that the Corporation has failed to supply soya fortified rava and has caused loss to the State Government to an extent of Rs.1.29 crores. Sri. R. B. Agwane's conclusions, while emphasizing that an enquiry would be necessary in order to examine the possibility of wheat being sold in the open market by private traders to make profits without processing the same particularly, read as under.

The Karnataka State Agro Corn Products limited, Bangalore has failed to supply Soya fortified rava to the extent of 9.956 MTs and therefore all the Child Development project Officers have purchased plain rava of 6.397 MTs at the price ranging from Rs 9.50 to Rs 15.25 per kg, presuming they have paid an NC: 2024:KHC:30778 average price of Rs 12.50 per kg. Then they have incurred an expenditure of Rs 8 crores. The cost of 6397 MTs Rava at Karnataka State Agro Corn Products limited price of soya fortified rava @ Rs 10,500 per MT would be ($6397 \times 10,500 = 6.71$ crores) and therefore it is concluded that had the Karnataka State Agro Corn Products limited supplied all the committed quantity at Rs. 10.50 per kg the excess Rs 1.29 crores would not have been incurred by the Child Development project Officer's. Therefore, the Karnataka State Agro Corn Products limited is responsible for this loss caused to the Government.

3. The Corporation, acting upon Sri R.B. Agwane's report, has appointed Sri N.S. Sangolli, a retired District Judge, as an Inquiry Officer to investigate into the possibilities of PDS wheat being sold in the open market to make profits. This Court must observe that the contemplated investigation was into [i] the total quantity of wheat allotted to and lifted by the Corporation between the years 1993-1994 and 1996-1997, [ii] the total quantity of wheat issued to the private traders by the Corporation and the quantity lifted by them, quantity of wheat supplied by the private mills to the Corporation and the delay therein,

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NC: 2024:KHC:30778 and [iii] the quantity of energy food/energy food mixes supplied by the Corporation under the ICDS projects.

4. Sri N.S. Sangolli has filed his Report detailing his visits to the Corporation's processing units at Mysuru, Chitradurga, Doddaballapur and Raichur and his interaction with the personnel. Sri N.S. Sangolli's final conclusions in his Report are extracted hereafter, and he has also opined that the beneficiaries of the ICDS scheme are denied benefits, despite the public exchequer being expanded for those purposes, because of misunderstanding between the supplier and the receiver. The conclusion referred to above reads as under:

Thus, it is clear from the discussions made above with reference to the material available there is no proper execution of the scheme and that there is mis-use of PDS Wheat particularly by the General Manager and no proper financial control was exercised by Finance Manager in the Head Office and Unit Heads at each unit particularly Unit Head of Chitradurga at the relevant time. I have no hesitation here to opine that this sort of mishandling and mismanagement of allotment, lifting and using the PDS wheat has forced certain Zilla Panchayats to purchase rava at higher

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NC: 2024:KHC:30778 rates particularly, Mysore so that the object of the Scheme is achieved and the beneficiaries, i.e., Children, pregnant women, etc., are supplied Energy Food and Food Mixes. But as stated above it is General Manager and Finance Manager in the Head Office during that period and Unit heads of all the units generally and Unit head of Chitradurga unit during that period according to me are the cause for the failure of the scheme so to say."

5. These are the preliminary exercises undertaken by the State Government and the Corporation before the petitioners are served with the corresponding articles of charges. The details of the charges served on the petitioners¹ for misconduct are as follows. The general imputation of misconduct is dishonesty in connection with the business of the Corporation, willful insubordination, negligence or neglect of duties, disobedience of orders/instruction issued by the management, breach of Service Rules and causing huge financial loss to the Corporation.

1 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 The details of the charges against The conclusions of the Inquiry the petitioner in Officer [IO] W.P.No.50964/2012 - Sri. V.R. Somwanshi [Annexure G] [Annexure E] As regards Charge No.1 [charge 1(a)-(c)]

(a) The petitioner has failed to achieve optimum utilization of the unit's capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat rava and the history of such utilization before the committee while awarding contracts to private millers.

These charges are not proved as there is no evidence.

(b) The petitioner has failed to devise management of production schedules to meet the requirement of Department of Women and Child and therefore Contributing to the loss of Rs.1.29 crores.

(c) The petitioner has failed to maintain quality of production The petitioner has admitted in his cross examination that he As regards Charges 2(a) to (c): has accepted wheat rava 20 days prior to the date M/s.

Brundavan Flour Mills lifted

(a) The petitioner has not PDS Wheat and that the observed proper procedures petitioner has also admitted

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in engaging private milers for
converting wheat into wheat
rava and in allowing M/s.
Brundavan Flour Mills

Bengaluru to supply 39.730
MTS of wheat rava 20 days
prior to lifting of PDS wheat
in violation of the directives of
the Corporation.

that he has accepted 2.29
MTS of Wheat Rava 30 days
beyond the date this Flour
mill lifted wheat.

The petitioner neither
maintained the record of
quantity of PDS Wheat lifted

(b) In accepting 2.29 MTS of by the private millers nor wheat rava after a delay of maintained proper record of more 30 days from the date receipt of Wheat Rava from of supply of the PDS wheat. the private millers.

(c) Ignoring corporation's interests in receiving wheat The petitioner's admission rava supplies from M/s. should suffice and the Brundavana Flour Mills by not petitioner's explanation for ensuring quality and timely receiving 2.29 mts wheat delivery.

rava beyond 30 days viz., "Controlled Weighment of the last consignment" is not persuaded to take a different view.

Thus, charges 2(a), 2(b) and 2(c) require to be held as proved.

(d) The petitioner has suppressed This charge is not proved as information about the exact there is no evidence. time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

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NC: 2024:KHC:30778 Charge 3 and 4 These charges are not proved as there is no evidence.

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and mishandling the responsibilities as the Unit Head of Doddaballapur.

6. The Disciplinary Authority, while considering the Inquiry Officer's Report and the material introduced in evidence, has opined the following:

[A] that the IO has stuck to the material placed on record and the petitioner has neither stated why certain documents [marked as Annexure D series] are relevant and useful to him nor has he led any evidence in examination -in-chief to disprove charges.

[B] that the petitioner has not made any efforts to deny the contents in Ex M 1 [Sri NS Sangolli's Report] and Ex M2 [Sri. RB Agwane's Report] as being incorrect.

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NC: 2024:KHC:30778 [C] that Sri. NS Sangolli has opined that even the private millers engaged have benefited from the PDS Wheat lifted by them from the Corporation for conversion into wheat rava and this has resulted in the Corporation failing to honor its commitment to supply wheat rava to the concerned ICDS center within the agreed time ultimately compelling the Zilla Panchayats to make purchases from the open market by paying extra money and thereby incurring losses.

7. The Disciplinary Authority, though instances of misappropriation, embezzlement and negligence are not part of the imputations in the article of charges, has referred to various instances misappropriation and embezzlement of funds and negligence resulting in the failure of the Government's Scheme for benefit of the less fortunate class of people resulting with the punishment of termination from the services.

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NC: 2024:KHC:30778 The details of the charges The conclusions of the Inquiry against the petitioner in Officer [IO] W.P.No.35645/2012 - Sri T R Srinath [Enquiry Report in Annexure D] [Charge Sheet in Annexure A] These Charges framed against this petitioner are proved on the As regards Charge No.1 basis of the Sri NS Sangolli's [charge 1(a)-(c)] Report in Ex M Ex- 1. The findings of the IO are as follows:

(a) The petitioner has failed to achieve optimum utilization of the unit's • The petitioner, as seen in capacity by deliberately data of PDS Wheat lifted concealing the inhouse and received [Annexures capacity for conversion A1 and A2] during the of wheat into wheat years 1994-95 and 1995-

rava and the history of 1996], has not maintained such utilization before consistency or correlation the committee while between allotment and avoiding contracts to lifting of PDS Wheat from private millers. Food Corporation of India's Godown by private millers and receipt of wheat rava is in 100:50 ratio.

(b) The petitioner has failed to devise and manage production schedules to • The Mysore Unit has not meet the requirement of followed proper Department of Women procedures in connection and Child and with allotment of PDS Contributing to the loss Wheat to the unit, lifting of of Rs.1.29 crores. PDS Wheat by private millers and supply of Wheat Rava back to the

(c) The petitioner has unit.

failed to maintain
quality of production.

• The petitioner, who has

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As regards Charges 2(a) to
(d):

(a) The petitioner has not

got himself examined as
his defense witness, has
admitted in his cross
examination that there
was delay of 25 days and
more in respect of

observed proper procedures in engaging private millers for converting PDS wheat into wheat rava and allowing north Karnataka Flour mills to lift wheat from godowns • at places other than the location.

acceptance of 8.262 MTS out of the total quantity of 225 MTS of wheat rava from M/s Manjunatha Flour Mills.

- (b) The petitioner has accepted supplies of • 15.645 MTS of Wheat Rava from M/s Nandi Roller Flour Mills and

The petitioner has himself contended that acceptance of delayed materials was within his powers.

22.845 MTS of Wheat These charges leveled against Rava from Manjunatha the petitioner are proved.

Flour Mills which were delayed beyond a period of 25 days and 22 days respectively.

- (c) The petitioner has ignored the interest of the corporation in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.

- (d) The petitioner has suppressed the information about the exact time of issue of wheat to the private millers and the time of

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supply of wheat rava by these private millers.

Charge 3 and 4

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation, mishandling the responsibilities as the Head of the Weaning Food Unit Mysore.

8. The Disciplinary Authority has opined that there is no perversity in the IO relying upon the documents produced by the Corporation and the petitioner has not stated why certain documents [Annexure D series] marked from his side are relevant and useful to him nor has he led any evidence in examination-in-chief to disprove charges; that he has not asserted that contents in Sri N.S. Sangolli's Report and Sri. RB Agwane's Report are factually incorrect. The Disciplinary Authority has further opined that though the management's witness has been cross-examined at length, the veracity of evidence adduced on behalf of the management remains unshaken. Ultimately, the

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NC: 2024:KHC:30778 Disciplinary Authority, while opining that the petitioner's mismanagement of allotment of lifting the PDS Wheat and untimely delivery of Wheat Rava has compelled the Zilla Panchayats secure the same at higher rates in Mysore has caused loss to the Corporation has imposed the punishment of termination from services.

The details of the charges The conclusions of the Enquiry against the petitioner in Officer [IO] W.P.No.35646/2012 - Sri R. Ramesh Rao [Enquiry Report in Annexure F] [Charge Sheet in Annexure C] As regards Charge No.1 The IO, after a detailed reference [charge 1(a)-(c)] to Sri. N.S. Sangolli's report and the petitioner's cross examination, has concluded that all the

(a) The petitioner has failed charges leveled against the to achieve optimum petitioner are proved because of utilization of the unit's the following. capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat • The petitioner has not rava and the history of maintained documents in the such utilization before unit to show the capacity of the committee while the unit for the conversion of awarding contracts to wheat into wheat rava. This private millers. shows that the petitioner has not considered the optimum capacity of his unit before

(b) The petitioner's failure awarding contracts to private to manage production millers and not followed the

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schedules to meet the requirement of Department of Women and Child and Contributing to the loss of Rs.1.29 crores.

(c) The petitioner's failure in maintaining the quality of production

As regards Charges 2(a) to (d):

(a) The petitioner has not observed proper procedure in engaging private millers for converting wheat into wheat rava and has allowed the lifting of PDS Wheat by private millers without any authority and transferred it to the other units of the Corporation without following the guidelines laid down by the Corporation.

(b) The petitioner has neither maintained the records of the quantity of PDS Wheat lifted by the private millers nor maintained proper record on receipts of wheat rava from the private millers more particularly from M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill.

procedure in engaging the private millers.

- Sri. NS Sangolli's report and certain data show that ratio of the wheat is to wheat rava supplied by millers is in 100:50 but it should have been 100:100.

- The petitioner has not carried out proper procedures to engage private millers.
- Since the petitioner has not maintained the dates of supply of Wheat Rava from the private traders, some items of supplies were found to be delayed by 20 to 60 days and thereby affecting the quality of supplies.

- (c) The petitioner has delayed supplies of 20 MTS of Wheat Rava from M/s Srinivasa Industries, Raichur and 150 MTS of Wheat Rava from M/s North Karnataka Roller Flour Mill, Belgaum by a delay of 20 days and 60 days respectively over the acceptable timeline.
- (d) The petitioner has ignored the Corporation's interest in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.
- (e) The petitioner has not suppressed information about the exact time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

As Regards Charge 3,4 and 5:

Charge 3:

The petitioner has lifted 2046.236 MTS of Wheat from Food Corporation of India and sent the same to units at Doddaballpur and Mysore without proper authorization and thereby causing financial losses to the company and in contravention to the directives

of the Corporation issued in
March 1996.

Charge 4 and 5:

The petitioner is knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and has mishandled the responsibility entrusted to you as the Unit Head for the Weaning Food Unit at Chitradurga and are indirectly responsible for the financial losses.

9. The Disciplinary Authority has opined,

referring to the instances of by M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill lifting wheat as mentioned in Sri. NS Sangolli's report, that the petitioner has not followed proper procedures in engaging private millers for converting wheat into wheat rava. As regards the non-consideration of the capacity of the unit before awarding contracts to the private millers, the Disciplinary Authority has concurred with the IO's findings. Further, the Disciplinary Authority, as in the case of the

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NC: 2024:KHC:30778 other two instances, has considered various instances of the petitioner's misappropriation and embezzlement of funds before imposing punishment. This petitioner is also imposed with the punishment of termination from the services.

10. The petitioner in W.P.No.50964/2012 [Sri V. R. Somwanshi]2 has impugned the Disciplinary Authority's order dated 25.01.2006 as also the Appellate Authority's order dated 20.03.2007 in W.P.No.15650/2006 apart from the show cause notices/ and orders issued for forfeiture of certain losses to the corporation because of his alleged failures in supply of soya milk. This W.P.No.15650/2006 is disposed of on 20.09.2011 quashing the Appellate Authority's order dated

20.03.2007 restoring the matter to the Appellate Authority observing that this authority shall consider the grounds of appeal and pass just orders. This Court must record that it is clarified that the appellate authority must ascertain whether the petitioner is 2 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 directly involved in the financial irregularities. This Court's order in this regard reads as under:

"In that view of the matter, it is ordered, the order of the appellate authority is quashed and the matter is remitted to the appellate authority who shall take into consideration the ground of appeal and pass appropriate orders. It is also made clear, whether the petitioner is directly involved in financial irregularity or not is a matter to be ascertained by the appellate authority."

11. Sri V.R. Somwanshi has carried this order in intra court appeal in W.A.No.17026/2011 and during its pendency, the appellate authority has disposed of the appeal by its order dated 03.01.2012. The Division Bench in view of this order dated 03.01.2012 has disposed of the writ appeal in W.A.No.17026/2011 on 24.09.2012 observing that the appeal is rendered infructuous and reserving liberty to challenge such order leaving open all contentions to be considered.

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12. The Appellate Authority, while considering the question whether Sri. V.R. Somwanshi is responsible for the financial irregularities, has re-iterated the earlier conclusion that the Unit Heads of concerned/DGM - Finance must be held responsible for the loss caused to the Government in the implementation of ICDS project; that the Unit Heads had the responsibility to ensure delivery of products as prescribed by the Government and according to the standards prescribed, and because Sri V.R. Somwanshi, as a Unit Head, has not conformed to the specifications, he must be held liable for the financial losses caused to the Corporation. The Appellate Authority has also referred to the opinion of the Disciplinary Authority that the punishment of termination from service is justified not only because of the present charges but also instances of earlier misappropriation and embezzlement.

13. The petitioners in W.P.No.35645/2012 and W.P. No. 35646/2012 [Sri T.R. Srinath and Sri R Ramesh Rao respectively] have also filed their corresponding writ

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NC: 2024:KHC:30778 petitions in W.P.No.17095/2007 and 17092/2007 impugning the show cause notices issued to them and the Disciplinary Authority's orders. These writ petitions are disposed of

by a common order dated 18.02.2011, and once again remitting the matter to the Appellate Authority to dispose of the appeal filed by them in accordance with the grounds urged in the appeal memorandum. The petitioners have carried this common order in intra court appeals in W.A.No.18049/2011 and 18045/2011. The petitioners have filed Memo/s for withdrawal placing on record that the Appellate Authority has passed orders in the month of January 2012 and that they may be given liberty to call in question such orders. The afore writ appeals are disposed of on 21.06.2012 in view of the memo filed by them and reserving liberty.

14. The Appellate authority has disposed of these petitioners' appeals with conclusions which read as follows:

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NC: 2024:KHC:30778 The Dismissal from services of the company is the appropriate penalty for the proved charges of misconduct. The disciplinary authority has taken a lenient view and also to meet the end of justice used the word 'termination' which was upheld by the Appellate Authority. More so, the word 'termination' is as good as dismissal. Literally, termination means "to bring or to come to an end or limit". Dismissal means to send or put away. In both cases the service of an employee is put to an end. So considering the grounds urged by Sri T.R. Srinath and Sri Ramesh Rao are to be dismissed from services under 8.3 (vii) of the Service Rules of KSACL.

15. Sri P.S. Rajagopal, the learned Senior Counsel for the petitioners, submits that this Court must interfere with the Disciplinary and Appellate Authorities' orders because [i] the charges against the petitioners are vague and they have not been given fair opportunity; [ii] there is no evidence against the petitioners to opine that the charges [as vague as they are] are proved; [iii] the Disciplinary Authority has travelled beyond the charges in opining that the imputations of financial and other

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NC: 2024:KHC:30778 irregularities amounting to misconduct are proved because of certain antecedent allegations of misappropriation and embezzlement though they are not mentioned in the charges; [iv] the Corporation's Service Rules do not even contemplate termination from service.

16. Sri P.S. Rajagopal elaborates on these grounds as follows.

On charges against the petitioners being general in nature and vague:

16.1 The imputations against the petitioners are such as that they have failed to achieve Optimum utilization of inhouse capacity, that they failed to devise and manage production schedules, and that they have not observed proper procedure in engaging private millers for converting wheat into wheat rava. In the case of Sri. V R Somwanshi the first of the afore allegations is said not to be proved but in the case of Sri R. Ramesh Rao and Sri T R Srinath, crucially based on the very same evidence, it

is opined that the allegations are proved.

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NC: 2024:KHC:30778 16.2 According to the Corporation, the proven charges against Sri V.R. Somvanshi are that he received 2.29 mts of wheat rava even before wheat was supplied and a certain other quantity of wheat rava was received beyond the prescribed period and that he has not followed the Guidelines in engaging the services of private millers. However, the charges do not even mention the details of the procedure that he was required to follow. The Corporation has referred to its directives in the matter of engaging private millers, for supply of wheat and for receipt of wheat rava but these directives are not mentioned in the charges.

16.3 In the case of Sri R Ramesh Rao and Sri T.R. Srinath the other imputations are that they have not observed proper procedure in engaging private millers, that wheat is delivered to private millers without due authorization and without following the Corporation's Guidelines, that they have permitted certain private millers, even outside their zones, to lift wheat without proper records. Even as against these allegations, the relevant

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NC: 2024:KHC:30778 Guidelines are not mentioned in the charges and the charges do not mention the quantities that these petitioners have supplied without records.

16.4 The petitioners have been denied a fair opportunity to know the specific charges against them because the charges against them are completely silent about the Directives/ Guidelines issued and the specific instances where there is either delay in receiving wheat rava or in allowing private millers to lift wheat, or in wheat rava being delivered even before lifting wheat. The charges against the petitioners should have been specific furnishing all the necessary details to afford them a fair opportunity of defending themselves against the imputations.

16.5 On the question of vagueness of charges, it is settled law that a plain reading of the charges and the statement of stipulations [if any], must show the exact nature of the allegations. The requirement in law for charges to be specific is embedded in the basic principle that a reasonable and adequate opportunity must be extended to

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NC: 2024:KHC:30778 the delinquent to defend himself/herself and if the delinquent is not told clearly and definitely what the allegations are against him, he/she cannot project defense imagining the circumstances in which the allegations are made. The Apex Court, in Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another³ when vague charges were made against a Bank official, has set aside the subject orders reiterating the afore proposition on definite charges affording a reasonable opportunity as enunciated in its earlier decision in Surath Chandra Chakrabarty v. State of West Bengal⁴.

On lack of evidence to reasonably conclude that the Charges against the petitioners are proved:

16.6 The corporation has examined Sri R. B. Agwane and Sri N.S. Sangolli and marked their reports in evidence. This is the only evidence placed on records.

However, Sri R.B. Agwane's report is not marked in its entirety and the portion marked does not bear his signature. 3 [2011] 14 SCC 379 4 2009 (12) SCC 78

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NC: 2024:KHC:30778 The report has certain annexures, and even those annexures are not marked. Sri N.S. Sangolli's report is marked but such report is based on interaction with certain persons at the units, but the statements recorded during such interaction are not placed on record.

16.7 The Inquiry Officer based on these documents has concluded that the charges as against the petitioners are proved because of reasons such as that they have not undermined the ocular evidence or the efficacy of the reports but has overlooked that the allegations related to transactions done over a period of time and not substantiated by any evidence. The conclusions against Sri Ramesh Rao and Sri T R Srinath based on ratio in the supply of wheat and receipt of wheat rava is presumptuous and not backed by documents apart from being inconsistent.

16.8 As against Sri V.R. Somavamshi, the Inquiry Officer, without any evidence, has opined that he has not maintained any records and the petitioner has admitted that he has received wheat rava beyond 30 days

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NC: 2024:KHC:30778 and even before supplying wheat. Similarly, as regards the imputations against Sri R. Ramesh Rao and Sri T.R. Srinath, the reliance is only on Sri N.S. Sangolli's report and certain data. The report, even if it could be relevant, should have been supported by the ocular evidence of those who have given statements, or in the least by furnishing and producing the statements recorded during the relevant time.

16.9 Sri N.S. Sangolli has not specifically spoken about the procedure that was required to be followed or the records not maintained to indicate the alleged breach. The Inquiry Officer, as in the case of Sri. V.R. Somwanshi even in the case of these two persons, has opined that there is an admission about receiving belatedly certain quantity of wheat rava, but these observations are totally contrary to the evidence on record as none of the three have admitted to anything.

16.10 The settled law is that there must be fairness in the conduct of the proceedings because such fairness will be part of the principles of natural justice. In

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NC: 2024:KHC:30778 the present case, only if all the relevant material to show the prescribed procedures and the breach were brought on record, it could be opined that the petitioners were given opportunity and if these materials are not brought on record, this Court must opine that the proceedings are not in accordance with fair play.

As against the Disciplinary Authority going beyond the Charges in opining that the imputations are proved.

16.11 The charges against the petitioners, though vague, are because of certain imputations, but the Disciplinary Authority has proceeded to opine that they must suffer termination from service because of other instances of wrong doing in procuring fortified food for different schemes and because they have displayed a consistent conduct of causing loss to the Corporation and that it will not be in the Corporation's interest to continue the petitioners' services. Irrefutably these other allegations are completely outside the purview of the imputations made

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NC: 2024:KHC:30778 against the petitioners as part of the article of charges served on them.

16.12 The Disciplinary Authority, even if it could have opined that the petitioners must suffer the extreme punishment of termination from service [dismissal from service], it should have been based only on the charges served on them and not because of any allegation that is extraneous to such charges. The Disciplinary Authority has thus, traversed beyond the charges and the material placed on record in opining that the petitioners must suffer termination from service, and the Appellate Authority has completely overlooked this aspect.

16.13 To underscore that the Disciplinary Authority's decision cannot be on the basis of surmises and presumption; that there must be acceptable proof [evidence] of the imputations; that there must be fair in Inquiry proceedings; that an Inquiry Officer cannot travel beyond the records to opine that person is guilty and if the inquiry officer thus go beyond the records, any disciplinary action

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NC: 2024:KHC:30778 based is only illegal, reliance is placed upon the decision of the Apex Court in Narinder Mohan Arya v. United India Insurance Company Limited⁵, while inviting this Court's attention more specifically to paragraph 26 thereof. On the orders for forfeiture and termination:

16.14 The Corporation has caused orders and show cause notices to the petitioners alleging that, because of their negligence and alleged violation of the respective directors/guidelines, they have caused financial losses to the Corporation and therefore, the salary, gratuity and earned leave must be forfeited. The Service Rules do not contemplate forfeiture and the Rules contemplate recovery when there is proven financial loss either because of negligence or breach of orders, but the

Disciplinary Authority in forfeiting the amount/s as indicated above has imposed a punishment that is not contemplated under the Service Rules.

5 2006 (4) SCC 713

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NC: 2024:KHC:30778 16.15 As regards the petitioners' case that they are essentially terminated from service and that termination is not contemplated as penalties under the Corporation's Service Rules, it is canvassed that the only punishments that are contemplated is [a] dismissal from service, [b] compulsory retirement, [c] reduction to a lower grade or post or lower time scale or lower stage in time scale and [d] recovery from pay the actual pecuniary loss caused by negligence or breach⁶. It is also canvassed that the termination from service is only when there is contractual employment not otherwise⁷.

16.16 The decision of the Apex Court in Vijay Singh v. State of Uttar Pradesh and Others⁸ is relied upon. Apart from recovery of the losses caused, and imposing fines, censuring and withholding increment. Rule 8.3 explanations (vi) and (vii) of the Corporation's Service Rules:

(vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement.

(vii) Termination of an employees on administrative grounds other than disciplinary measures as provided under the Rules, as the said authority may specify, where no such provision specify, the employees shall be paid 50% of the basic pay and dearness allowances based on such amount

8 2012 (5) SCC 242

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NC: 2024:KHC:30778 upon to buttress the petitioner's case that the disciplinary proceedings are regulated and controlled by the statutory rules, and therefore, the disciplinary authorities while performing the quasi-judicial function, are not permitted to ignore the statutory rules. The contention is that there must be strict adherence to the Rules and any punishment outside the purview of the statutory rules is a nullity and cannot be enforced against the petitioner. The reliance is on the following paragraph from this decision.

"15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

17. Sri. M. Subramanya, the learned counsel for the Corporation, submits that the petitions insofar as they are filed challenging the Disciplinary Authority's orders cannot be sustained, and if at all the petitioners could be

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NC: 2024:KHC:30778 aggrieved, it could only be as against the Appellate Authority's order dated 03.01.2012. The learned counsel submits that when the petitioners first impugned the Disciplinary Authority's orders before this Court in the earlier writ proceedings, this Court has categorically opined that the Disciplinary Authority's orders cannot be faulted because of the findings recorded by the Inquiry Officer, and that this Court has also concluded that the petitioners have been granted sufficient opportunities and there is no error in the decision making process.

18. Sri. M..Subramanya argues that the petitioners' have called in question this Court's orders in their corresponding intra-court appeals, but these appeals are disposed of because of the memo filed by the petitioners, and such disposal does not in any manner dilute the findings as regards the decision making process and the merits of the Disciplinary Authority's order. The learned Counsel also canvasses that the petitioners who have participated in the inquiry proceedings without contending

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NC: 2024:KHC:30778 that the charges are vague cannot now raise such ground now, especially after the first round of litigation.

18.1 Sri. M. Subramanya next submits that each of the petitioners has categorically admitted in the cross examination that they did not have the authority to receive wheat rava belatedly or to receive rava even before the Millers are permitted to lift wheat. In this regard, the learned counsel relies upon the following in the Disciplinary Authority's order in the case of V.R. Somwanshi:

The charge sheet officer has admitted in his cross examination that it is true that he accepted wheat rawa 20 days prior to the lifting of wheat by Brundhavan Flour Mills. He has accepted delayed receipt exceeding 30 days over and above the acceptable period.

Sri. V.R.Somavamshi has come out with truth in his cross examination that he has accepted 2.29 metric tons of wheat rawa after delay of 30 days from Brundhavan Flour mills but the reason given by him that it was controlled weighment of the last

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NC: 2024:KHC:30778 consignment does not convince me to take a different view.

Insofar as Sri R. Ramesh Rao and Sri T.R. Srinath, the learned counsel canvasses that the Inquiry Officer, based on the suggestions by these officers to the Corporation's witnesses [and materials produced by these persons], has opined that documents have not been maintained to show the capacity of the units under their supervision, that the dates of supply from private traders are not maintained and the wheat rawa is received in different ratios though as per the agreement dated 06.09.1996 the wheat rawa had to be supplied in the ratio of 100:100.

18.2 Sri M.Subramanya submits that the Inquiry Officer has considered evidence viz., the suggestions in the cross examination of the witnesses, the documents produced by the petitioners and the two reports. Therefore, it cannot be gainsaid that the Inquiry Officer's opinion and the Disciplinary Authority's orders are based on evidence. The learned counsel proposes to rely upon the decision of the

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NC: 2024:KHC:30778 Apex Court in the State Of Haryana Vs Ratan Singh reported in AIR 1977 SC 1512 to contend that the provisions of the Indian Evidence Act,1872 are not required to be complied with while conducting an inquiry and that if reasonable and credible material are brought on record, the conclusions arrived at in the departmental proceedings cannot be interfered with. The learned counsel emphasizes the following exposition in the decision.

"4. It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act, 1872 may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case- law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

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NC: 2024:KHC:30778 18.3 The learned counsel also relies upon several decisions of the Apex Court to contend that Courts will not interfere with the findings in disciplinary matters unless it is shown that the conclusions are clearly without evidence or perverse, and that the Courts will not substitute its conclusions either in the matter of credibility of evidence or quantum of punishment, but there is no detailed reference to these authorities in view of the fact that Sri. P.S.Rajagopal does not dispute the propositions underscored by these decisions.

19. In the light of the rival submissions, the questions for consideration are as follows:

[a] Whether this Court must interfere with the Disciplinary/ Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence.

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NC: 2024:KHC:30778 [b] Whether the impugned orders are vitiated in law because the Disciplinary/Appellate Authorities have considered material and circumstances that are extraneous to the Charges served on the petitioners.

[c] Whether the petitioners are served with penalty which is beyond the contemplation of the Services Rules.

[d] Whether there is any justification for interference with the decision to recover any amount from the petitioners' salary and gratuity/encashment of earned leave.

20. This Court, even before these questions are considered, must examine whether these questions would be open for consideration in view of the conclusions in the earlier writ proceedings. The petitioners have impugned the Disciplinary Authority's impugned orders in the first round of litigation, and indeed each of these writ petitions are disposed of with certain observations. These observations are essentially in the context of the narrow band within which the grievances against the conclusion of the

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NC: 2024:KHC:30778 disciplinary proceedings are examined, and this Court has opined that the petitioners have not been able to demonstrate any fallacy in the decision-making process as they are given sufficient opportunity.

20.1 However, this opinion has not remained the last words on the controversy inasmuch as each of the petitioners have called in question such opinion in their corresponding intra court appeals but without the advantage of interim order as against the limited relief of remand granted by this Court calling upon the Appellant Authority to examine their grievance that the Disciplinary Authority's decision to terminate their services is despite the fact that termination is not contemplated as a penalty under Rule 8 of the Service Rules. As such, the Appellate Authority, during the pendency of these intra court appeals, has examined this grievance, and when it is brought to the notice of the concerned Division Benches, either with a memo or otherwise, the writ appeals are disposed of with liberty.

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NC: 2024:KHC:30778 20.2 This Court must refer to the orders of the concerned Division Bench in writ appeal in WA No. 17026/2011 [writ appeal by Sri V R Somawamshi], and this order essentially reads as under:

According to the learned counsel for the respondent No.2, this appeal has become infructuous because pursuant to the appellant's signature, the appellant authority has already passed an order in the month of January 2012. If it is so, we are of the view that the present appeal is become infructuous. If the petitioner is aggrieved by the order passed by the appellant authority, is at liberty to challenge the same. All contentions are kept open.

The orders in the other two intra court appeal, reserving liberty, are essentially because of memo/s filed with a request to call in question the Appellant Authority subsequent orders dated 03.01.2012 leaving all contentions open.

20.3 The question, whether the petitioners' grievance as against the Disciplinary Authority's orders

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NC: 2024:KHC:30778 remains open for consideration, will have to essentially turn on the expanse of the liberty reserved by the Division Bench. The petitioners' grievance with this Court's opinion on they being given sufficient opportunity and that there is no fallacy in the Disciplinary Authority's orders was pending consideration in the intra court appeals, which are disposed of because of the Appellate Authority subsequent orders on the question whether the petitioners' services could be terminated under the Service Rules without examining the petitioners' grievance as against this Court's opinion. If the Division Benches were of the opinion that the petitioners cannot have any grievance as against this Court's opinion, it would not be unreasonable to opine that there would have been a categorical and unequivocal expression in that regard, or in the least a qualified liberty reserved only to challenge the Appellate Authority's orders.

20.4 In the absence of either any comment by the Division Benches on the petitioners' grievance as against this Court's conclusion or limiting the liberty reserve to call in question just the appellate authority's orders in specific

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NC: 2024:KHC:30778 terms, this Court is of the considered view that the examination in the present proceedings cannot be limited just to the merits of the Appellate Authority's orders. This Court refer to the expressions "all contentions are kept open"

and "reserving liberty" employed by the Division Benches.

As such, the questions framed must be examined for a decision on merits.

On Question [a]9

21. The essence of the charges against the petitioner is that [a] they have deliberately not achieved optimum utilization of the concerned units capacity and they have suppressed the necessary details from the concerned resulting in the decision to award the contract a private millers, [b] they have not managed production scheduling, [c] there is either delay in receiving wheat rava from the private millers or they have received wheat rava even before supplying wheat to the millers, [d] they have 9 Whether this Court must interfere the Discipline/Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence

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NC: 2024:KHC:30778 received wheat rava in the ratio far lesser than the prescribed ratio [100:50 as against 100:100], [e] they have permitted private millers, even millers from outside the jurisdiction, to draw wheat without records. The imputation is that the petitioners have been deliberate and negligent in the above intending to cause pecuniary losses to the corporation.

22. The Apex Court in Surath Chandra Chakrabarty vs. State of Bengal and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another [supra] has held that the grounds on which disciplinary action is proposed must be reduced to the form of a definite charge/s and they have to be communicated to the person concerned and that this rule embodies the principle that specific contents afford a reasonable and adequate opportunity for defending oneself. The Apex Court has also opined that if a person is not actually informed about the allegations in clear and definite terms, he cannot possibly, by projecting his own imagination, discover all facts and

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NC: 2024:KHC:30778 circumstances that may be in the contemplation against him.

22.1 The Apex Court in its later decision in Anant R. Kulkarni vs. Y.P.Education Society and others¹⁰, referring to these decisions and also certain earlier decisions, has reiterated these propositions in the following terms:

Thus, nowhere should a delinquent be served a charge- sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge- sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which

formed the basis of charges and no enquiry can be sustained on vague charges.

10 2013 6 SCC 516

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NC: 2024:KHC:30778 22.2 The first set of charges against the petitioners is that they have failed to achieve optimum utilization of the corresponding Unit's capacity. The petitioners contend that this charge is vague because the Corporation has not indicated the necessary material in the charge sheet to justify that there was a certain fixed Optimum Capacity and that the petitioners have failed to achieve the same on one particular occasion, or on multiple occasions. Their case is that these and other details had to be produced. Admittedly, the petitioners have functioned as the respective unit heads over a period of time. This Court must opine that if the imputation is that there was a certain Optimum Capacity, and the units were not put to full use of such capacity, it was incumbent upon the Corporation to furnish these two indices and the details of the period during which there is shortfall. This Court must also opine that if these details are furnished as charges/statement of imputations such charges and imputation will lack details and therefore, vague.

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NC: 2024:KHC:30778 22.3 It is argued on behalf of the Corporation that the petitioners have participated in the proceedings and at this stage, they cannot raise this ground. However, the Apex Court has clearly exposed that if the charges are vague and the evidence adduced is perfunctory, the proceedings are not saved only because the concerned have not taken a defense in this regard and the dispositive test is whether the concerned knew about the allegation.

22.4 Significantly, in the case of Sri. V.R. Somwanshi on similar charge [the failure to optimize capacity], the Inquiry Officer has opined that the charge is not proved, but in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, the Inquiry Officer has opined that the charges are proved. This Court, in the light of the discussion in the Inquiry Report/ Disciplinary Authority's Orders [the Appellate Authority has not considered these aspects] cannot discern how it could be so in one case and not in the other cases. Perhaps it could be observed that the vagueness in the charge has even confused the Inquiry Officer and the Disciplinary Authority.

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NC: 2024:KHC:30778 22.5 The other charges against the petitioners are that they have either received wheat rava beyond the scheduled period or even before supply of wheat. In the case of Sri. V.R. Somwanshi it is alleged that the corresponding numbers are 39.730 mts and 2.29 mts. On his behalf it is contended that he was working as unit head over a period of time and there is supply of wheat and receive of wheat rava during this period and that unless the charge specifically mentioned that he received a particular quantity during a particular period or supplied a particular quantity during a particular period, he could not have defended against this allegation.

22.6 This Court must observe that there is considerable force in this contention. If Sri. V.R. Somwanshi was indeed put on notice, as part of the charges, that he had during a particular period, either received wheat rava without supply of wheat or received wheat rava beyond a particular time, he would have known what he was up

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NC: 2024:KHC:30778 against. The Inquiry Officer¹¹ has opined that the charges against the Sri. V.R. Somwanshi are proved because he has admitted in his cross-examination that he has received the aforesaid quantities.

22.7 The Disciplinary Authority has extracted cross examination by Sri V R Somwanshi [as also the other petitioners in the corresponding orders and the extracted portions in each of the orders are the same]. However this Court, on reading of such extracts, must observe that there is no such admission either by Sri V R Somwamshi or the others. Therefore, the opinion that there is admission and as such there is proof of the charge is wholly erroneous. ¹¹ "The charge sheeted officer has admitted in his cross-

examination that it is true that he accepted wheat rava 20 days prior to the lifting of wheat by Brindavan Flour Mills.... Sri. Somwanshi has come out with truth in his cross- examination that he has accepted 2.29 M.Ts of wheat rava after delay of more than 30 days from Brindavan Roller Flour Mills, Bangalore. But the reason given by him that it was on account of controlled wighment of the last consignment does not convince me to take a different view of the matter."

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NC: 2024:KHC:30778 22.8 Indeed, it is trite that strict rules of evidence, will not apply in departmental proceedings, but the requirement of definite charges and believable evidence is a part of fair play that is integral to the proceedings. In this context, this Court must observe that the purported admission, though not required to be of the sterling quality as it should be under the general rules of evidence, it must reasonably indicate a categorical acknowledgement.

22.9 The next set of charges are that both Sri. R. Ramesh Rao and Sri. T.R. Srinath have not observed proper procedure in engaging the services of private millers and they have permitted the private millers to lift wheat without due authorization and without maintaining records. Here again, the charges do not mention the prescribed parameters that were required to be followed to afford a reasonable opportunity to them to offer a plausible explanation to vindicate their stand that charges are falsely laid against them. This Court must opine that they would have been extended a reasonable opportunity only if they

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NC: 2024:KHC:30778 were put on notice of the relevant directives and guidelines issued and the specific instances of failure.

22.10 The Inquiry Officer and Disciplinary Authority have opined that these charges, which in this Court's opinion are vague, are proved because of a certain ratio that was required to be maintained in the supply of wheat and receipt of wheat rava relying upon certain observations in the reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane without indicating the definite roles played by each of these petitioners. As regards the ratios and the details referred to in these reports and the efficacy of such reports, this Court must observe that it is based on data and orders and agreement concluded by the Corporation. However, this agreement is not referred to in the charge or in the material brought on record. The report also refers to ratio of 100:50, 100:75 and 100:100, and if any particular ratio is to be the dispositive factor, the petitioners should have been put on notice of the period during which that fallen short and if they have fallen short by varying ratios for over a period of time, the details thereof.

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NC: 2024:KHC:30778 22.11 Further, the reports have certain annexures, and those annexures have not been introduced as evidence. In the absence of specific instances of failure to comply with the directives on engaging the services of private millers or the inadequacies and maintaining the records, this Court must opine that the vague and uncertain charges are held to be proved on the basis of no evidence. This Court must observe that these conclusions must also extend to other imputations such as failure to ensure implementation of the scheme and supply of wheat to millers outside what is described as the Units' area of operation.

22.12 This Court must therefore opine that the inquiry proceedings are commenced on the basis of vague and indefinite charges and the Inquiry Reports are filed opining that charges are proved without definite evidence and that the Disciplinary Authority has accepted these conclusions without considering the circumstances but only extracting extensively the contents of the Reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane and Inquiry

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NC: 2024:KHC:30778 Reports. The Appellate Authority, which should have gone into all the details, has also not gone into these details. This has resulted in the petitioners suffering a penalty without fair opportunity. Hence, the question [a] framed is answered accordingly.

On Question [b]12

23. The Disciplinary Authority, in the case of Sri. V.R. Somwanshi, after referring to the Inquiry Officer's report on the charges and the evidence as against such charges has also referred to certain instances to opine that he is not a person in whom any faith or trust could be reposed. The instances referred to are as follows:

- a) The alleged embezzlement of certain funds showing exorbitant expenditure during National Maize Mela 2001.

b) The allegation of utilization of substandard jaggery, dal and wheat for manufacture of energy food, during the year 1998-99.

12 Whether the impugned orders are vitiated in law because the Disciplinary Authority has considered material and circumstances that are extraneous to the Charges served on the petitioners

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c) The payment of higher rate of commission to M/s.Colonac International Limited, Chennai for the purchase of 36,524 gunny bags.

d) The alleged loses to the Corporation when he was working with the Corporations maize mill at Bengaluru.

23.1 This Court, on perusal of the Disciplinary Authority's order in this regard, must observe that the decision to impose the penalty of termination of the Sri. V. R Somwanshi's services is entwined by the consideration of the aforesaid circumstances along with the consideration of the Inquiry Officer's report. In the absence of any reference of these materials in the article of charge served on Sri. V.R. Somwanshi, this Court must opine that extraneous consideration have gone into the decision.

23.2 Similarly, in the case of Sri. R. Ramesh Rao, the Disciplinary Authority has referred to the alleged exorbitant rates paid to M/s.Christy Fried Gram Industries for purchase of ragi malt flour and the manner in which the responsibilities are discharged by him as the Chief Division

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NC: 2024:KHC:30778 Manger when he was posted as the Corporation's Head Office in Bengaluru, these instances are also not part of the article of charges. In the case of Sri. T.R. Srinath, though no specific instances as in the above two cases are mentioned, there is a general reference to he defrauding the company exhibiting "height of negligence and he being a security risk to the Corporation".

23.3 This Court must observe that these observations are not because of the outcome of the Inquiry proceedings but a general assessment of circumstances outside the scope of the inquiry to opine that the petitioners have failed to work with honesty and sincerity. These considerations must be held to be totally extraneous to the disciplinary proceedings and is in violation of the principles of natural justice because the inquiries are instituted not only to establish the truth but also to extend a reasonable opportunity to the concerned to establish his defense or vindicate his position for exoneration against specific charges. Hence, the question [b] framed is answered accordingly.

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NC: 2024:KHC:30778 On Question [c]13

24. The Disciplinary Authority, by the impugned orders, has directed the termination of the petitioners from their services, and it is contended that the Service Rules do not contemplate termination of a permanent employee, and the Rules contemplate termination of only those employees who are in contractual employment. This contention is in the light of the provisions of Rule 8.3 of the Service Rules which read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

- i)
- ii)
- iii)
- iv)
- v) Reduction to a lower grade or post or to a lower time scale or to a lower stage in a time scale;
- vi) Compulsory retirement.
- vii) Dismissal from service.

13 Whether the petitioners are served with penalty, which is beyond the contemplation of the Services Rules.

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NC: 2024:KHC:30778 Explanation:

The following shall not amount to a penalty within the meaning of this rule.

- i)
- ii)
- iii)
- iv)

v)

vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement and

vii) Termination of services of employees on administrative grounds other than a disciplinary measure as provided for under the rules, as the said authority may in its discretion specify; and where no such proposition specified the employees shall be paid 50% of his basic pay and dearness allowance based on such amount."

24.1 It is trite that the expression dismissal and termination do not mean the same and they have their respective connotations though both bring about ceasing of employment. Generally, dismissal is a penalty imposed after opportunity under the relevant Service Rules as is required under Article 311 of the Constitution of India, and termination is not so as it will be upon contractual terms.

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NC: 2024:KHC:30778 As such, dismissal is stigmatic while the termination is not. Further, dismissal will result in denial of benefits, and termination need not be so as certain amounts may have to be paid according to the contractual terms.

24.2 The Corporation's Service Rules provide for both dismissal and termination of permanent employees. This Court must refer to Rule 2- 21 of the Service Rules apart from Rule 8. The termination under Rule 8-3 Explanation (vii) is for administrative reasons and other than as a disciplinary measure. If there is termination for administrative reasons, the concerned may specify the terms of severance, and if terms are not specified, the later part of the Explanation will come into play. Further, the provisions of Rule 2-21 of the Service Rules contemplate termination of a permanent [and a temporary] employee but on certain varying terms regarding notice period and the amount payable in lieu thereof. Crucially, for the purposes of the present case, this Court must opine that if there are disciplinary proceedings, the termination will be Dismissal

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NC: 2024:KHC:30778 from Service as contemplated under Rule 8-3(vii) of the Service Rules.

24.3 The petitioners have been extended opportunity to respond to certain imputations, and thereafter a decision, though not found justifiable because of the reasons as aforesaid, is taken to dismiss the petitioners. It is nobody's case that the petitioners are terminated for administrative grounds independent of the disciplinary proceedings. Therefore, this Court must opine that the petitioners have been served with the penalty of dismissal from service, and the Appellate Authority's reference to the provisions of Rule 8.3(vii) in its order dated 03.01.2012 is of no significance in the circumstances discussed. Therefore, this Court will not interfere with the orders of the Disciplinary Authority or Appellate Authority on the ground that the Corporation has travelled beyond the Service Rules in this regard.

On Question [d]14 14 Whether there is any justification for interference with the decision to recover from the petitioners' salary/gratuity/encashment of earned leave

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NC: 2024:KHC:30778

25. The decision to forfeit/ recover certain amounts from the amounts payable to the petitioners is not just because of the disciplinary proceedings discussed above, but also because of the conclusion in certain other proceedings and because of the show cause notices issued as regards certain alleged losses caused to the Corporation. In the case of Sri. V.R. Somwanshi, the decision to recover / forfeit is based on the departmental proceedings conducted by the Inquiry Officer Sri. Sosale Indudhar and certain show cause notices issued and the anticipation of the culmination of the civil proceedings, and in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, it is because of the aforesaid disciplinary proceedings and certain losses alleged caused to the Corporation because of other transactions.

26. The details of the orders/ show cause notices and the nature of the amount/s proposed to be recovered/ forfeited are as follows:

The petitioner's name/ The The amount and its nature impugned Orders /Show recovered/ forfeited Cause Notices in this regard

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NC: 2024:KHC:30778 Sri. V R Somwanshi Rs. 2,45,409/- [Gratuity] and Rs 2,00,831/- [Leave Encashment] i] Order dated 20.03.2007 [Annexure AD] As against an ascertained loss of Rs. 80,71,152/-

ii] Order dated 28.05.2007 Rs. 18,518/- [Salary] [Annexure AF] As against loss of Rs. 27,903] caused the remaining [Rs. 9,385/-] to be collected by filing a civil suit.

Sri. T.R Srinath Rs. 15,435/- [salary]

Dated 25/27.01.2007 in Rs. 2,93,725 [Gratuity] and
Annexure N

Rs. 1,26,135/- [Leave
Encashment]

For recovery of a sum of Rs.
32,25,000/- with direction to
recover the remaining Rs.

27,89,705/- by filing a civil suit.

Sri R Ramesh Rao

Rs. 15,153 [Salary]

Dated 25/27.01.2007 in
Annexure R

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NC: 2024:KHC:30778

For recovery of Rs. 32,25,000/,
and to recover the remaining Rs.
32,09,847/- by filing a civil suit

26.1 The question whether the Corporation can forfeit the salaries, gratuity and Leave Encashment to recover its dues must be necessarily examined in the light of the provisions of Rule 8.3(v) and Rule 4-17 Note ii of the Service Rules and the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 in the light of decisions of the Apex Court in Mahanadi Coalfields Ltd. v. Ravindranath Choubey¹⁵ and Jyotirmay Ray v. Field General Manager, Punjab National Bank¹⁶. The Apex Court in these decisions, referring to the provision Section 4(6) and Section 14 of the Payment of Gratuity Act, 1972 and the relevant service regulations, has held that, with the provisions of Section 14 of this Act having overriding effect and the provisions of section 4(6)¹⁷ contemplating forfeiture of 15 (2020) 18 SCC 71 16 (2023) SCC Online SC 1452 17 Section 4(6) of the Payment of Gratuity Act reads as under:

(6) Notwithstanding anything contained in sub-section (1),--

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NC: 2024:KHC:30778 gratuity on dismissal of an employee, it would be open to an employer to forfeit gratuity. The relevant observations in the second decision are as follows:

The provisions of Gratuity Act make it clear that forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited.

26.2 The Corporation's Service Rules do not contemplate forfeiture of either gratuity or leave encashment

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of,

property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 6[may be wholly or partially forfeited]--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

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NC: 2024:KHC:30778 when there are disciplinary proceedings. However, the Rule 4-17 Note ii of the Service Rules read as under:

An employee who is discharged or dismissed from the services of the Corporation during the course of the year shall be paid earned leave wages for the number of days of earned leave at his credit at the time of his discharge or dismissal from the service of the Corporation as per the Section 15(4) of the Mysore Shops and Commercial Establishments Act, 1963 and Section 79(3) of the Factories Act, 1948.

It follows from the provisions referred to above that the Corporation can forfeit gratuity but insofar as earned leave, even when there is dismissal from service it must be paid subject to the aforesaid provisions. As regards salary, the provisions of the provisions of 8.3(iv) of the Service Rules read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders of the competent authorities of the Corporation or State or Central Government.

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NC: 2024:KHC:30778 The Corporation is thus vested with the power to recover salary when there is pecuniary loss.

26.3 In the case of Sri V R Somwanshi the decisions to forfeit salary /gratuity/ earned leave [Annexure

- AD and AF, which are dated 20.03.2007 and 28.05.2007], are not because of the decision resulting from the disciplinary proceedings referred to above but are consequent to other proceedings in which the petitioner has not participated. This Court is not called upon to decide the merits of such proceedings, and therefore, there cannot be any interference on this ground with these orders.

26.4 The decision to forfeit salary /gratuity/ earned leave [Annexure - N in WP No. 35645/2012 which is dated 25/27.01.2007] in the case of Sri T R Srinath is because of the decision resulting from the disciplinary proceedings referred to above. With this Court opining that the decision to dismiss him from service is in the light of vague and general charges without evidence and in denial of fair

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NC: 2024:KHC:30778 opportunity in the proceedings, this order dated 25/27.01.2007 must be quashed.

26.5 In the case of Sri R Ramesh Rao, the decision [Annexure R dated 25/27.01.2007 in WP No. 35646/2012] is because of the conclusion of the departmental proceedings resulting in his dismissal from service which cannot be sustained in view of this Court's opinion in the present proceedings, but there is no decision to forfeit either gratuity or earned leave and the decision is only to forfeit salary in a sum of 15,153/- . However, as the decision to forfeit is because of the dismissal order, this Court must interfere with this decision.

ORDER [A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure -H], the Appellate Authority - Board's order dated 21.11.2011 [Annexure - AP] and the Order dated 03.01.2012 [Annexure - AN].

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NC: 2024:KHC:30778 [B] The question of payment of consequential benefits shall be considered subject to the orders dated 20.03.2007 and 28.05.2007 [Annexure AD and AF respectively].

In WP No. 35645/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority's Order dated 25.01.2006 [Annexure -H] and the Appellate Authority -

Board's order dated 21.11.2011/ the Order dated 03.01.2012 [Annexure - Q] and the Order dated 25/27.01.2007 [Annexure - N].

[B] The consequential benefits shall be paid by the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

In WP No. 35646/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure-K] and the Appellate Authority -

Board's order dated 21.11.2011/ Order dated 03.01.2012 [Annexure - T] and Order dated 25/27.01.2007 [Annexure - R].

[B] The consequential benefits shall be paid to the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

Sd/-

(B.M.SHYAM PRASAD) JUDGE *NV Ct:vh

Sri Vishwanath S Hegde vs Shri Moulali S/O Bashasab Shiggavii on 1 August, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 1ST DAY OF AUGUST 2024

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 100361 OF 2023
C/W
WRIT PETITION NO. 100977 OF 2023

IN CRL. P No.100361/2023
BETWEEN:

SRI. VISHWANATH S. HEGADE,
AGE: 54 YEARS, OCC: ADVOCATE,
R/O: SUBRAHAMANYA BUILDING,
OPP: GOVIDRA HALL, VIKAS ASHRAM,
CIRCLE SIRSI, TQ: SIRSI,
DIST: KARWAR - 581401.

...PETITIONER

(BY SRI. VENKATESH M. KHARVI AND SMT. NIRMALA V. DODAMANI,
ADVOCATES)

AND:

YASHAVANT
NARAYANKAR SHRI. MOULALI S/O. BASHASAB SHIGGAVI,

AGE: 22 YEARS, OCC: COOLIE,
R/O: KARADAGI, TQ: SAVANUR,

Location: HIGH DIST: HAVERI - 581126.

COURT OF

KARNATAKA (BY SRI. S.A. KOLAKAR, ADVOCATE)

...RESPONDENT

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
SEEKING TO QUASHED THE ORDER PASSED BY THE JUDICIAL
MAGISTRATE FIRST CLASS-II COURT, BELAGAVI IN PRIVATE
COMPLAINT NO.105/2021 DATED 03.03.2022 IN C.C.NO.1284/2022
FOR THE OFFENCE PUNISHABLE U/SEC. 493, 494, 496 R/W 149 OF
IPC AGAINST THE ACCUSED NO.8 BY ALLOWING THE PETITION.

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

IN WP No.100977/2023

BETWEEN:

1. SMT. SEEMBRAN D/O. RABBANI BHATTI,
AGE: 23 YEARS, OCC: TAILORING AND TUITION,
R/O: NEAR WATER TANK, GANDHI NAGAR,
TQ: MUNDAGOD, DIST: KARWAR - 581349.
2. SRI. MOULALI S/O. KHADARSAB HARAKONI,
AGE: 27 YEARS, OCC: BUSINESS,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.
3. SRI. RABBANI S/O. GHOUSESAB BHATTI,
AGE: 57 YEARS, OCC: MECHANIC,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
4. SMT. RAZIYA W/O. RABBANI BHATTI,
AGE: 51 YEARS, OCC: LABOUR WORK,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
5. SMT. BASIRA D/O. KHADARSAB SHIGGAVI,
AGE: 46 YEARS, OCC: HOUSEHOLD,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.
6. SRI. REHAN S/O. RABBANI BHATTI,
AGE: 20 YEARS, OCC: LABOUR,
R/O: NEAR WATER TANK,
GANDHI NAGAR, TQ: MUNDAGOD,
DIST: KARWAR - 581349.
7. SMT. BASIRA D/O. RABBANI BHATTI,
AGE: 21 YEARS, OCC: LABOUR WORK,
R/O: NEAR WATER TANK,
GANDHI NAGAR, DIST: KARWAR - 581349.

...PETITIONERS

(BY SRI. VENKATESH M. KHARVI AND SMT. NIRMALA V. DODAMANI
ADVOCATES)

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NC: 2024:KHC-D:10891
CRL.P No. 100361 of 2023
C/W WP No. 100977 of 2023

AND:

SHRI. MOULALI S/O. BASHASAB SHIGGAVI,
AGE: 22 YEARS, OCC: COOLIE,
R/O: KARADAGI, TQ: SAVANUR,
DIST: HAVERI - 581126.

...RESPONDENT

(BY SRI. SAYADAHMED A. KOLAKAR, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA R/W SEC. 482 OF CR.P.C PRAYING TO ISSUE THE WRIT OF CERTIORARI OR ANY ORDER OR DIRECTIONS TO QUASH THE ORDER PASSED BY THE JMFC - IV COURT, BELAGAVI IN PC NO.105/2021 IN CC NO.1284/2022 DATED 03/03/2022 FOR THE OFFENCE SECs. 493, 494 AND 496 R/W 149 OF IPC VIDE ANNEXURE-W.

THESE PETITIONS COMING ON HEARING ORDERS THIS DAY,
THE COURT MADE THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL ORDER

Crl.P.No.100361/2023 is filed by accused No.8 praying to quash the order dated 03.03.2022 passed in private complaint No.105/2021 by JMFC-IV Court, Belagavi registering of the criminal case for offences punishable under Sections 493, 494 and 496 read with Section 149 of NC: 2024:KHC-D:10891 Indian Penal Code (hereinafter referred as to "IPC" for brevity) and consequent registration of C.C.No.1284/2022.

2. W.P.No.100977/2023 is filed by accused Nos.1 to 7 praying to issue writ of certiorari to quash the order dated 03.03.2022 passed in private complaint No.105/2021 by the JMFC-IV Court, Belagavi registering criminal case for offences punishable under Sections 493, 494 and 496 read with Section 149 of IPC and consequent to registration of C.C.No.1284/2022.

3. Since both petitions arise out of the same order hence, they are taken together for disposal.
4. The respondent -complainant is husband of accused No.1 -Smt. Simran. Marriage of the respondent - complainant with accused No.1 has taken place on 29.05.2020. It is alleged in the complainant that accused No.2 married accused No.1 on 02.05.2021 during subsistence of marriage of complainant with accused No.1. It is also alleged that accused Nos. 3 to 8 in collusion with each other solemnized the marriage of accused No.1 with NC: 2024:KHC-D:10891 accused No.2 on 02.05.2021 at about 11.30 a.m. at Yamanapura Village as per muslim rituals.
5. It is stated in the complaint that the marriage of respondent -complainant with accused No.1 was subsisted and there was no divorce and therefore, the marriage of accused No.1 with accused No.2 attracts Sections 493, 494 and 496 read with Section 149 of IPC. The respondent/ Complainant in that regard has filed a private complaint No.105/2021 on the file of IV JMFC Belagavi. The learned Magistrate has recorded a sworn statement of complainant as CW.1 and two witnesses as CW.2 and CW.3 and got marked 6 documents as Ex.C.1 to Ex.C.6. Learned Magistrate by his order dated 03.03.2022 has ordered to register a criminal case against accused No.2 for offences punishable under Sections 493, 494 and 496 read with Section 149 of IPC and consequently, C.C No.1284/2022 came to be registered against accused Nos.1 to 8 for the said offences. The said order dated 03.03.2022 and consequent registration of the criminal case has been sought to be quashed in these petitions.

NC: 2024:KHC-D:10891

6. Heard the learned counsel for the petitioners and learned counsel for the respondent.
7. Learned counsel for petitioners would contend that no marriage has taken place on 02.05.2021 between accused Nos.1 and 2 as alleged at Yamanapur village and the persons appearing in the photographs - Ex.C.1 to Ex.C.4 are not the accused Nos.1 and 2. The accused No.1 has filed a suit in O.S No.67/2021 against her husband i.e., complainant/ respondent on 14.09.2021 seeking dissolution of the marriage and prior to that she had filed a petition under Protection of Women from Domestic Violence Act against the respondent/ complainant and others in Crl. Misc. No.16/2021 and it came to be filed on 09.04.2021 and therefore to take revenge against accused No.1, the complainant has filed a false complaint against the accused persons. The accused No.1 has also filed the petition seeking maintenance under Section 125 of Cr.P.C in Crl. Misc. No.47/2021 on the file of JMFC, Mudhol and it is also filed on 14.09.2021. Therefore, the respondent/ complainant as a counter blast has filed a private NC: 2024:KHC-D:10891 complaint against the accused persons making false allegations. The accused No.2 married one Heena Kousar on 25.04.2019 and he is having a child out of that marriage. He contended that the Jamat has issued a certificate that accused No.1 had married Heena Kousar. As accused No.2 married to Heena Kousar there is no question of marrying accused No.1 who is wife of respondent/ complainant. The said suit OS No.67/2021 has been filed by accused No.8 who is a petitioner in Crl. P. No.100361/2023 as a Advocate for Seembran against the respondent/ complainant and therefore, he has been arrayed as accused No.8 in the complaint. The photographs produced and marked as Ex.C.1 to Ex.C.5 are not that of accused Nos.1 and 2 and the accused Nos.3 to 8 are not seen in those photographs. He placed

reliance on the decision of the Hon'ble Apex Court in the case of Ramesh Chandra Gupta Vs. State of Uttar Pradesh and Others reported in 2022 Live Law (SC) 993 in which the Apex Court has considered the case of Bhajan Lal and Neeharika Infrastructure Private Limited, the NC: 2024:KHC-D:10891 grounds on which the criminal proceedings can be quashed. He also relied on the decision of the Co-ordinate Bench of this Court rendered in Crl.P. No.101812/2023 contending that the offences under Sections 494, 495 and 496 of IPC are not attracted against the members of the extended family and they cannot be prosecuted for those offences. He also placed reliance on the decision of the Co-ordinate Bench of this Court rendered in Crl.P. No.7517/2017 contending that only the person who married during the subsistence and the life time of earlier spouse and the earlier marriage could be prosecuted for offence under Section 494 of IPC. He contends that accused No.2 is the cousin brother of accused No.1 and therefore, there is a grudge against the accused No.2 by the complainant. On these grounds he prays to quash the proceedings against the petitioners.

8. Learned counsel for the respondent would contend that the accused No.1 and respondent/complainant resided in a rented house of Karadagi village. The case filed by the accused No.1 against the NC: 2024:KHC-D:10891 complainant will not come in the way since accused No.2 by marrying the accused No.1 has committed the offences alleged against him. The accused No.1 has filed a private complaint No.105/2021 against the respondent/complainant and it came to be referred to Police for investigation and the Police filed B-report in the said case and it indicates that a false complaint has been filed by the complainant against the respondent. The respondent appeared in all cases filed by accused No.1 and he is contesting those cases on merits. He supports the reasoning assigned by the learned Magistrate in ordering registration of the criminal case and issue of process against them. He contends that the evidence of CW.1 to CW.3 and documents Ex.C.1 to Ex.C.7 are sufficient to establish the offences alleged against the accused persons. On these grounds he prayed for dismissal of both the petitions.

9. Having heard the learned counsels, the Court has perused the material placed on record.

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NC: 2024:KHC-D:10891

10. It is not in dispute that accused No.1 is a wife of respondent/complainant and their marriage has been solemnized on 29.05.2020 and it is still subsisting. It is also not in dispute that the accused No.1 had filed OS No.67/2021 on 14.09.2021 against the respondent/complainant seeking dissolution of marriage. It is also not in dispute that accused No.1 has filed Crl.Misc. No.16/2021 on 09.04.2021 against the respondent and others and filed Crl.Misc. No.47/2021 under Section 125 of Cr.P.C against the respondent/complainant seeking maintenance.

11. On going through the averments of the complaint and sworn statement of complainant/CW.1 indicate that accused No.2/ Sri.Moulali has married the accused No.1 Seembran on 02.05.2021 at Yamanapur village of Belagavi. The said version of CW.1 has a support of the sworn statement of 2 witnesses namely Hazaresab Allabhaksha Kolkar (CW.2) and Hazaresab Mahadahaniph Baradukhane (CW.3). CW.2 and CW.3 also stated that they witnessed the marriage of accused No.2

with accused

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NC: 2024:KHC-D:10891 No.1 on 02.05.2021 at 11:30 am at Yamanapur village. As on the date of the said marriage i.e., on 02.05.2021, the marriage of the complainant/ respondent with accused No.1 Seembran was subsisting. The said act of marriage of accused No.2 with accused No.1 during the subsistence of marriage of respondent/ complainant with accused No.1/ Seembran attracts offence under Section 494 of IPC as against accused Nos.1 and 2.

12. Case which came to be registered against the accused Nos.1 to 8 is for offences under Section 493, 494 and 496 r/w Sections 149 of IPC. Therefore, it is necessary to extract the said provisions namely 493, 494 and 496 of IPC.

"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.-Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494. Marrying again during lifetime of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description

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NC: 2024:KHC-D:10891 for a term which may extend to seven years, and shall also be liable to fine.

Exception.- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

496. Marriage ceremony fraudulently gone through without lawful marriage.-Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to

seven years, and shall also be liable to fine.

13. On careful reading of Section 494, it applies to the parties to the second marriage and not the persons who were present at the ceremony of the second marriage. Even though, the accused Nos.3 to 8 are stated to be present at the ceremony of marriage on 02.05.2021 between accused Nos.1 and 2, the said aspect will not attract the offence under Section 494 of IPC.

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NC: 2024:KHC-D:10891

14. Either in the averments of the complaint or in the sworn statement of CW.1 to CW.3, there is no any averments of cohabit or sexual intercourse between accused Nos.1 and 2. Therefore, the offence under Section 493 of IPC is not attracted against the accused Nos.1 and

2. The said offence under Section 493 is also not attracted against the other accused namely accused Nos.3 to 8. As allegation against them is that they were present at the time of ceremony of marriage between accused Nos.1 and

2. An offence under Section 494 of IPC is different from the offence under Section 496 of IPC. If the accused intends that there should be a valid marriage and performed the necessary ceremonies during the life time of other spouse, then it may be a case under Section 494 of IPC, but if the accused only intends that there should only a marriage and dishonestly and fraudulently goes through the marriage ceremony knowing fully well that he is not legally married thereby it is an offence under Section 496 of IPC. There is no allegation either in the complaint or in the sworn statement of CW.1 that accused

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NC: 2024:KHC-D:10891 No.2 has dishonestly and fraudulently has gone through the marriage ceremony knowing fully well that he is not legally married. To attract offence under Section 496 of IPC, the essential ingredients are i) dishonestly or with fraudulent intention going through the ceremony of marriage ii) Knowledge on the part of the person going through the ceremony that he is not lawfully married. On considering the said ingredients the said offence is also not attracted against the persons who are present at the ceremony of the second marriage.

15. In view of the above, no offence is made out against the accused Nos.1 to 8 for offences under Section 493 and 496 of IPC. There is also no case made out to attract offences under Section 494 of IPC against accused Nos.3 to 8.

16. In view of the above, the following:

ORDER

- i) The Crl.P.No.100361/2023 is allowed.
- ii) The W.P.No.100977/2023 is allowed in part.

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NC: 2024:KHC-D:10891

iii) The order dated 03.03.2022 passed in PC No.105/2021 by the JMFC II Court, Belagavi and consequent registration of CC No.1284/2022 against accused Nos.3 to 8 is quashed. The registration of a case against accused Nos.1 and 2 for offence under Section 493 and 496 also stands quashed.

iv) The trial Court to continue the proceedings
against accused Nos.1 and 2 in CC

No.1284/2022 for offence under Section 494 of IPC.

v)

vi) Sd/-

(SHIVASHANKAR AMARANNAVAR) JUDGE DSP,PJ Ct:anb

Sudeesh vs Vidya K V on 30 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 5497 OF 2024
C/W
CRIMINAL PETITION NO. 2887 OF 2022
CRIMINAL PETITION NO. 2048 OF 2024

IN CRL.P NO.5497/2024

BETWEEN:

1. SUDEESH
S/O VELAYUDHAN,
AGED ABOUT 36 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

2. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. VELAYUDHAN
C/O KRISHNA,
AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FL00R,

NC: 2024:KHC:30121

CRL.P No. 5497 of 2024

C/W CRL.P No. 2887 of 2022

CRL.P No. 2048 of 2024

SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJIPURA,
BENGALURU - 560 047.

PRESENTLY AT
UNIT 11/2 DALZIELL STREET
MADDINGTON 6109

REPRESENTED BY THE SPA HOLDER
VELAYUDHAN

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. VIDYA K.V.,
WIFE OF SUDHEESHA,
AGED ABOUT 28 YEARS,
VISHNU BHAVAN, NADUBHAGAM,
CHAMPAKKULAM P.O., NEDUMUDI
ALAPPUZHA
KERALA - 688 505

RESIDING AT NO. 100/5
2ND FLOOR, SHAKTHI MAHA GANAPATHI TEMPLE
ROAD, (OLD PANCHAYATH ROAD) BILLEKAHALLI,
DEVARACHIKKANAHALLI MAIN ROAD,
BENGALURU - 560 076

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NC: 2024:KHC:30121

CRL.P No. 5497 of 2024

C/W CRL.P No. 2887 of 2022

CRL.P No. 2048 of 2024

WORKING AT
NANO HOSPITALS,

NO.79, SRI. M. VISVESWARAYA ROAD,
NYANAPPANA HALLI, HULIMAVU, DLF CITY ROAD,
NEAR AREKERE SAIBABA TEMPLE,
BANGALORE - 560 076.

2. MASTER AADI-S
AGED ABOUT 3 YEARS,
REPRESENTED BY HIS MOTHER
SMT. VIDHYA K V
RESPONDENT NO.1 HEREIN

... RESPONDENTS

(BY SRI. PRADEEP KUMAR P D., ADVOCATE FOR R1 AND R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE PRESENT
PETITIONERS U/S 12 OF PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT IN CRL.MISC.NO.61/2023 PENDING
BEFORE THE M.M.T.C. - VI COURT, BENGALURU.

IN CRL.P NO.2887/2022

BETWEEN:

1. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.
2. VELAYUDHAN
C/O KRISHNA,

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJPURA,
BENGALURU - 560 047.

AS PER FIR
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. SUJATHA
W/O AARONSHEEL
AGED ABOUT 32 YEARS,
RESIDENT OF 2 LOWMAN ST.,
THRONILE WA 6108

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001

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NC: 2024:KHC:30121

CRL.P No. 5497 of 2024

C/W CRL.P No. 2887 of 2022

CRL.P No. 2048 of 2024

2. VIDYA K V
D/o NOT KNOWN,
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1;
R2 SERVED)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE
PETITIONERS IN CRIME NO. 25/2022 FOR THE OFFENSES
PUNISHABLE U/S 498A,504 r/w 34 OF IPC NOW PENDING AT
EAST ZONE WOMEN PS., PULAKESHINAGAR POLICE STATION,
IN THE FILES OF VI ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE COURT AT BENGALURU.

IN CRL.P NO.2048/2024
BETWEEN:

SUDHEESH KV.,
S/O VELAYUDHAN K.,

AGED ABOUT 38 YEARS,
R/AT NO.206,
S.A. HEIGHTS APARTMENTS,
DEVARACHIKKANAHALLI,
BANGALORE 560 076,
PRESENTLY RESIDING AT
133/A, 38TH B CROSS,
26TH MAIN, JAYANAGAR,
9TH BLOCK, BANGALORE 560 069

...PETITIONER

(BY SMT. SHREYA S KUMAR, ADVOCATE)

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001
2. VIDYA K V
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE FIR AGAINST THE PETITIONER IN CR.NO.25/2022
FOR THE OFFENCE P/U/S 498A,504 R/W 34 OF IPC NOW
PENDING ON THE FILE OF THE VI A.C.M.M COURT AT
BENGALURU.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

Petitioners in the case at hand are the husband, his family members and the complainant wife. Proceedings that are called in question are setting criminal law into motion for the offences punishable under Section 498A, 504 read with 34 of Indian Penal Code. Inter-alia and the NC: 2024:KHC:30121 proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as DV Act for short).

2. It transpires during the pendency of the petition, the parties to the lis, i.e., husband and wife have settled the dispute amongst themselves by drawing up certain terms of settlement. In furtherance thereof, in all such settlement, the terms of settlement in the joint memo which supported by joint affidavit reads as follows:

JOINT MEMO "1. It is submitted that the marriage of the Petitioner No.1 with the Respondent No.1 herein was solemnized on 17-04-2019 at Alappuzha, Kerala, in accordance with Hindu religious rites, rituals and ceremonies. It is submitted that the Respondent No.2 is the minor child of Petitioner No.1 and Respondent No.1

2. Due to marital dispute in the said marriage, the Respondent No.1 herein had lodged a criminal complaint against the present Petitioners and his family members at the East Zone Women Police Station in Crime N00025/2022 for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City and had also filed a complaint under section 12 of the DV Act, against the Petitioners, now pending before the Ld.MMTC-VI, Bengaluru.

NC: 2024:KHC:30121

3. That, both the parties have agreed to settle disputes between them mutually. Based on such amicable settlement, both the parties have entered into memorandum of settlement dated 10-04-2024 in M.C.No.1158/2024, filed before the Ld.Principal Judge Family Court, Bengaluru.

4. It is submitted that the Petitioner No.1 has made a fixed deposit for the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) in the name of the Respondent No.2 at Karnataka Bank Ltd., Jayanagar Branch, Bengaluru, bearing no.0611500124163801, dated 04-04-2024 mentioning Respondent No.1 deposit. as guardian for the said fixed

5. That as per the mutually agreed terms, the Petitioner No.1 has agreed to pay an amount of Rs.2,00,000/- (Rupees Two Lakhs only) vide demand draft/RTGS/online fund transfer to the bank account of the Respondent No.1 before this Hon'ble Court and it was agreed that the Respondent No.1 will agree to co-operate in quashing Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the Petitioner's family and Petitioner.

6. Since the matter is amicably settled between the parties, the Respondent No.1 herein has no objection to quash the entire proceedings initiated against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City. The copies of the photo ID proofs of the Petitioners and Respondent No.2 are attached as Document No.1.

7. In view of the said settlement, this Hon'ble Court may be pleased to quash the FIR against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504

r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrupatunga Road, Bengaluru City and to quash the NC: 2024:KHC:30121 entire proceedings against the Petitioners in Crl.Misc.No.61/2023 for the offence punishable under section 12 of Protection of Women from Domestic Violence Act, now pending before the MMTC VI Court, Bengaluru."

3. A condition in the affidavit so filed is quashment of entire proceedings against the petitioners in Crl.Misc.No.61/2023 for the offence punishable under Section 12 of DV Act pending before the MMTC VI Court, Bengaluru and quash the petitions in Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the petitioner's family with a prayer to quash the FIR in Cr.No.0025/2022 for the alleged offences punishable under Sections 498A, 504 read with 34 of IPC, pending on the file of VI Additional Chief Metropolitan Magistrate Court, Bengaluru.

4. In the light of the settlement arrived between the parties and the offences punishable are the ones as mentioned hereinabove are not heinous and not against the State and learned counsel for the respondent submits that as per the conditions stipulated in the settlement are fully paid, I deem it appropriate to accept the

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NC: 2024:KHC:30121 compounding application and terminate the proceedings against the petitioners in these petitions.

5. For the aforesaid reasons, the following:

ORDER i. Criminal Petitions stand disposed.

ii. Entire proceedings under Section 12 of Protection of Women from Domestic Violence Act, pending in Crl.Misc.No.61/2023 before the Metropolitan Magistrate Traffic Court - VI, Bengaluru and;

iii. Entire proceedings in Crime No.0025/2022 for the offence punishable under Sections 498A, 504 read with Section 34 of IPC pending at Fast Zone Women Police, Pulakeshinagara Police Station in the files of VI Additional Chief Metropolitan Magistrate Court, Bengaluru against the petitioners stands quashed.

Sd/-

(M.NAGAPRASANNA) JUDGE

Sudheesh Kv vs State Of Karnataka on 30 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 5497 OF 2024
C/W
CRIMINAL PETITION NO. 2887 OF 2022
CRIMINAL PETITION NO. 2048 OF 2024

IN CRL.P NO.5497/2024

BETWEEN:

1. SUDEESH
S/O VELAYUDHAN,
AGED ABOUT 36 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

2. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. VELAYUDHAN
C/O KRISHNA,
AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FL00R,

NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJIPURA,
BENGALURU - 560 047.

PRESENTLY AT
UNIT 11/2 DALZIELL STREET
MADDINGTON 6109

REPRESENTED BY THE SPA HOLDER
VELAYUDHAN

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. VIDYA K.V.,
WIFE OF SUDHEESHA,
AGED ABOUT 28 YEARS,
VISHNU BHAVAN, NADUBHAGAM,
CHAMPAKKULAM P.O., NEDUMUDI
ALAPPUZHA
KERALA - 688 505

RESIDING AT NO. 100/5
2ND FLOOR, SHAKTHI MAHA GANAPATHI TEMPLE
ROAD, (OLD PANCHAYATH ROAD) BILLEKAHALLI,
DEVARACHIKKANAHALLI MAIN ROAD,
BENGALURU - 560 076

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

WORKING AT
NANO HOSPITALS,

NO.79, SRI. M. VISVESWARAYA ROAD,
NYANAPPANA HALLI, HULIMAVU, DLF CITY ROAD,
NEAR AREKERE SAIBABA TEMPLE,
BANGALORE - 560 076.

2. MASTER AADI-S
AGED ABOUT 3 YEARS,
REPRESENTED BY HIS MOTHER
SMT. VIDHYA K V
RESPONDENT NO.1 HEREIN

... RESPONDENTS

(BY SRI. PRADEEP KUMAR P D., ADVOCATE FOR R1 AND R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE PRESENT
PETITIONERS U/S 12 OF PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT IN CRL.MISC.NO.61/2023 PENDING
BEFORE THE M.M.T.C. - VI COURT, BENGALURU.

IN CRL.P NO.2887/2022

BETWEEN:

1. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.
2. VELAYUDHAN
C/O KRISHNA,

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJPURA,
BENGALURU - 560 047.

AS PER FIR
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. SUJATHA
W/O AARONSHEEL
AGED ABOUT 32 YEARS,
RESIDENT OF 2 LOWMAN ST.,
THRONILE WA 6108

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

2. VIDYA K V
D/o NOT KNOWN,
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1;
R2 SERVED)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE
PETITIONERS IN CRIME NO. 25/2022 FOR THE OFFENSES
PUNISHABLE U/S 498A,504 r/w 34 OF IPC NOW PENDING AT
EAST ZONE WOMEN PS., PULAKESHINAGAR POLICE STATION,
IN THE FILES OF VI ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE COURT AT BENGALURU.

IN CRL.P NO.2048/2024
BETWEEN:

SUDHEESH KV.,
S/O VELAYUDHAN K.,

AGED ABOUT 38 YEARS,
R/AT NO.206,
S.A. HEIGHTS APARTMENTS,
DEVARACHIKKANAHALLI,
BANGALORE 560 076,
PRESENTLY RESIDING AT
133/A, 38TH B CROSS,
26TH MAIN, JAYANAGAR,
9TH BLOCK, BANGALORE 560 069

...PETITIONER

(BY SMT. SHREYA S KUMAR, ADVOCATE)

-6-

NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001
2. VIDYA K V
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE FIR AGAINST THE PETITIONER IN CR.NO.25/2022
FOR THE OFFENCE P/U/S 498A,504 R/W 34 OF IPC NOW
PENDING ON THE FILE OF THE VI A.C.M.M COURT AT
BENGALURU.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

Petitioners in the case at hand are the husband, his family members and the complainant wife. Proceedings that are called in question are setting criminal law into motion for the offences punishable under Section 498A, 504 read with 34 of Indian Penal Code. Inter-alia and the NC: 2024:KHC:30121 proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as DV Act for short).

2. It transpires during the pendency of the petition, the parties to the lis, i.e., husband and wife have settled the dispute amongst themselves by drawing up certain terms of settlement. In furtherance thereof, in all such settlement, the terms of settlement in the joint memo which supported by joint affidavit reads as follows:

JOINT MEMO "1. It is submitted that the marriage of the Petitioner No.1 with the Respondent No.1 herein was solemnized on 17-04-2019 at Alappuzha, Kerala, in accordance with Hindu religious rites, rituals and ceremonies. It is submitted that the Respondent No.2 is the minor child of Petitioner No.1 and Respondent No.1

2. Due to marital dispute in the said marriage, the Respondent No.1 herein had lodged a criminal complaint against the present Petitioners and his family members at the East Zone Women Police Station in Crime N00025/2022 for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City and had also filed a complaint under section 12 of the DV Act, against the Petitioners, now pending before the Ld.MMTC-VI, Bengaluru.

NC: 2024:KHC:30121

3. That, both the parties have agreed to settle disputes between them mutually. Based on such amicable settlement, both the parties have entered into memorandum of settlement dated 10-04-2024 in M.C.No.1158/2024, filed before the Ld.Principal Judge Family Court, Bengaluru.

4. It is submitted that the Petitioner No.1 has made a fixed deposit for the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) in the name of the Respondent No.2 at Karnataka Bank Ltd., Jayanagar Branch, Bengaluru, bearing no.0611500124163801, dated 04-04-2024 mentioning Respondent No.1 deposit. as guardian for the said fixed

5. That as per the mutually agreed terms, the Petitioner No.1 has agreed to pay an amount of Rs.2,00,000/- (Rupees Two Lakhs only) vide demand draft/RTGS/online fund transfer to the bank account of the Respondent No.1 before this Hon'ble Court and it was agreed that the Respondent No.1 will agree to co-operate in quashing Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the Petitioner's family and Petitioner.

6. Since the matter is amicably settled between the parties, the Respondent No.1 herein has no objection to quash the entire proceedings initiated against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City. The copies of the photo ID proofs of the Petitioners and Respondent No.2 are attached as Document No.1.

7. In view of the said settlement, this Hon'ble Court may be pleased to quash the FIR against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504

r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrupatunga Road, Bengaluru City and to quash the NC: 2024:KHC:30121 entire proceedings against the Petitioners in Crl.Misc.No.61/2023 for the offence punishable under section 12 of Protection of Women from Domestic Violence Act, now pending before the MMTC VI Court, Bengaluru."

3. A condition in the affidavit so filed is quashment of entire proceedings against the petitioners in Crl.Misc.No.61/2023 for the offence punishable under Section 12 of DV Act pending before the MMTC VI Court, Bengaluru and quash the petitions in Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the petitioner's family with a prayer to quash the FIR in Cr.No.0025/2022 for the alleged offences punishable under Sections 498A, 504 read with 34 of IPC, pending on the file of VI Additional Chief Metropolitan Magistrate Court, Bengaluru.

4. In the light of the settlement arrived between the parties and the offences punishable are the ones as mentioned hereinabove are not heinous and not against the State and learned counsel for the respondent submits that as per the conditions stipulated in the settlement are fully paid, I deem it appropriate to accept the

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NC: 2024:KHC:30121 compounding application and terminate the proceedings against the petitioners in these petitions.

5. For the aforesaid reasons, the following:

ORDER i. Criminal Petitions stand disposed.

ii. Entire proceedings under Section 12 of Protection of Women from Domestic Violence Act, pending in Crl.Misc.No.61/2023 before the Metropolitan Magistrate Traffic Court - VI, Bengaluru and;

iii. Entire proceedings in Crime No.0025/2022 for the offence punishable under Sections 498A, 504 read with Section 34 of IPC pending at Fast Zone Women Police, Pulakeshinagara Police Station in the files of VI Additional Chief Metropolitan Magistrate Court, Bengaluru against the petitioners stands quashed.

Sd/-

(M.NAGAPRASANNA) JUDGE

T R Srinatah vs The Chairman on 2 August, 2024

Author: B M Shyam Prasad

Bench: B M Shyam Prasad

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 2ND DAY OF AUGUST, 2024
BEFORE
THE HON'BLE MR JUSTICE B M SHYAM PRASAD
WRIT PETITION NO. 50964 OF 2012 (S-RES) C/W
WRIT PETITION NO. 35645 OF 2012
WRIT PETITION NO. 35646 OF 2012

IN WP NO. 50964/2012:

BETWEEN:

SRI. V.R.SOMWANSHI S/O. RAMRAO
AGED ABOUT 56 YEARS,
RESIDING AT NO.249, "INDIRA NIVAS",
NEAR BASAVA TEMPLE,
BASHTTIHALLI INDUSTRIAL AREA,
DODDAALLAPUR-561 203,
BANGALORE RURAL DISTRICT.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

Digitally signed
by VINAYAKA B V AND:
Location: HIGH
COURT OF
KARNATAKA
DHARWAD
BENCH

1. THE MANAGEMENT OF

DHARWAD
Date: 2024.08.14 KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
10:40:44 +0530

A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO.2479, BELLARY ROAD, HEBBAL,
BANGALORE-560 024.

2. THE MANAGING DIRECTOR

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024.

3. THE APPELLATE AUTHORITY

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024, BY ITS MEMBER.

... RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, QUASH THE ORDER OF TERMINATION ORDER DATED 25.1.06 VIDE ANNX-H PASSED BY THE R2 HEREIN QUASH THE ORDER DATED 20.3.07 PASSED BY THE R2 VIDE ANNX-A4; QUASH THE ORDER DATED 28.5.07 PASSED BY R2 VIDE ANNX-A6; QUASH THE SHOW CAUSE NOTICE DATED 29.6.07 PASSED BY R2 VIDE ANNX-A7 QUASH THE MINUTES OF THE CORPORATION MEETING NO.201 DATED 21.11.11 OF THE R3 VIDE ANNX-A14.

IN WP NO. 35645/2012

BETWEEN:

T R SRINATH
S/O. LATE T N RAMAMURTHY,
AGED ABOUT 53 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, DODDABALLAPURA UNIT,
SINCE ILLEGALLY DISMISSED FROM SERVICE,
AND R/A NO.2479, BELLARY ROAD,
HEBBAL BANGALORE-560024.

..PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

PRODUCTS LIMITED,
P.B.NO.2479, BELLARY ROAD,
HEBBAL, BANGALORE-560024.

2. THE MANAGING DIRECTOR
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

...RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 25.1.2006 & 25/27-01-07 UNDER ANN-H AND N TO THE WP PASSED BY THE DISCIPLINARY AUTHORITY & ORDER DATED 03.1.2012 PASSED BY THE APPELLATE AUTHORITY COMMUNICATED TO THE PETITIONER BY COMMUNICATION DATED 3.1.12 UNDER ANN-Q TO THE WP BY ISSUE OF WRIT IN THE NATURE OF CERTIORARI & GRANT ALL CONSEQUENTIAL BENEFITS.

IN WP NO. 35646/2012:

BETWEEN:

R. RAMESH RAO S/O. S. RAMADAS,
AGED ABOUT 56 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMTIED, MYSORE UNIT,
SINCE ILLEGALLY DISMISSED
FROM SERVICE, & R/A FLAT NO.1,
VISHAL APARTMENTS, NO.21,
MODEL HOUSE STREET,
BASAVANAGUDI, BANGALORE-560024.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR

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NC: 2024:KHC:30778

WP No. 50964 of 2012

C/W WP No. 35645 of 2012

WP No. 35646 of 2012

SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.
2. THE MANAGING DIRECTOR
KARNAAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

. . . RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, QUASH THE ORDER DATED 25.1.2006 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACPL/MD/2005-06/3650 (UNDER ANNEXURE-K TO THE WRIT PETITION); ORDER DATED 25/27.1.2007 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACP/ADM/2854/06-07 (UNDER ANNX-R TO THE WRIT PETITION; AND ORDER DATED 3.1.2012 NO.KSACP/ADALITHANIRVAHANE /1240/2011-12 PASSED BY THE APPELLATE AUTHORITY (UNDER ANNX-T TO THE WRIT PETITION) BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI & DIRECT THE RESPONDENT BY ISSUE OF A WRIT IN THE NATURE OF MANDAMUS TO REINSTATE THE PETITIONER INTO SERVICE FORTHWITH WITH ALL CONSEQUENTIAL BENEFITS INCLUDING PAYMENT OF ALL BACK WAGES AND INCIDENTAL SERVICE BENEFITS THAT FLOW FROM QUASHING OF ANNEXURES-K, R & T AND ETC.

THESE WRIT PETITIONS, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

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ORDER

The petitioners have called in question the orders of the Disciplinary, Appellate Authorities and the orders of forfeiture, and one of the petitioners has also called in question show cause notices/ orders issued for forfeiture of certain alleged losses causes to M/s Karnataka State Agro Corn Products Limited [the Corporation]. The details of these impugned orders/ show cause notices are as follows:

Details of Details of the orders Details of the the writ of the disciplinary show cause orders of petition and appellate notices for forfeiture authorities forfeiture W.P.No. (i) Termination (i) Show cause The Order order No. notice bearing No. 50964/2012 KSACPL/ MD/ bearing No. KSACP/ADM/44 2005/ 06/3649 KSACP/ADM 1/07-08 dated [Sri.V.R. dated 25.01.2006 /3261/06-07 passed by the dated 28.05.2007 Somvanshi] Disciplinary 20.03.2007 (Annexure-AF) Authority [Annexure [Annexure-H]. AD]

(ii) The minutes of (ii) Show the Corporation cause Meeting No.201 notice dated 21.11.2011 bearing No. passed by the KSACP/ADM Appellate /SC/697/07 Authority -08 dated [Annexure-AP] 29.06.2007 [Annexure-

AG] W.P.No. (i) Order dated The show The order dated 25.01.2006 cause notice 25/27.01.2007 NC: 2024:KHC:30778 35646/2012 passed by the for forfeiture is in No. Disciplinary not impugned. KSACP/ADM/28 [R.Ramesh Authority in No. 54/06-07 Rao] KSACPL/MD/200 (Annexure-R) 5-06/ 3650 (Annexure-K)

(ii) Order dated 03.01.2012 No KSACP/ Adalitha Nirvahane/1240/ 2011-12 passed by the Appellate Authority (Annexure-T) W.P.No. (i) Order dated The show (i)The order 25.01.2006 cause notice dated 25/27-01-

35645/2012	passed by the for forfeiture is 2007 passed by Disciplinary	not impugned.	the Disciplinary
[Sri. TR Srinath]	Authority in No. KSACPL/MD/200		Authority in No.
	5-06/365 (under Annexure-H to the Writ petition).	KSACP/ADM/28 55/06-07 [Annexure-N]	
	(ii) Order dated 03.01.2012 No. KSACP/Adalitha Nirvahane/1241/ 2011-12 [Annexure-Q].		

A brief statement of facts:

2. The petitioners were employed with the Corporation as Unit Heads. The Corporation, a State Government Undertaking incorporated for production and supply of supplementary/nutritious food for women in the family way and children below the age of six years, has established its food processing units in places such as NC: 2024:KHC:30778 Bengaluru, Belgaum, Mysuru, Chitradurga, Raichur and Doddaballapur. The Corporation contends that Food Specialists such as the petitioners are appointed as Unit Heads to oversee the function of these units and that given the expertise of these Food Specialists/ Unit Heads, they are vested with the full responsibility of ensuring quality of the supplemental and nutritious food to be provided to the women and children.

2.1 The Union Government's Integrated Child Development Scheme [ICDS] is also implemented through the Corporation. This scheme is inter alia to provide nutritious and fortified food [energy food/energy food mixes] to the beneficiaries through the concerned Anganwadi Centers. The Corporation has delivered wheat procured from Public Distribution System [PDS] to private millers to supply wheat rava to Anganwadi Centers. The Corporation contends that the Unit Heads, who were required to invite tenders from private millers, finalize contracts for supply of PDS Wheat and receive wheat rava, NC: 2024:KHC:30778 were also required to ensure quality and then supply the same to the Anganwadi Centers.

2.2 The State Government has appointed an Officer of the Indian Administrative Services Cadre [Sri R. B. Agwane] to investigate the reasons for complaints about lack of quality in the wheat rava supplied to the Anganwadi centers and the delay in supply as well. Sri R. B. Agwane has filed his report concluding that the Corporation has failed to supply soya fortified rava and has caused loss to the State Government to an extent of Rs.1.29 crores. Sri. R. B. Agwane's conclusions, while emphasizing that an enquiry would be necessary in order to examine the possibility of wheat being sold in the open market by private traders to make profits without processing the same particularly, read as under.

The Karnataka State Agro Corn Products limited, Bangalore has failed to supply Soya fortified rava to the extent of 9.956 MTs and therefore all the Child Development project Officers have purchased plain rava of 6.397 MTs at the price ranging from Rs 9.50 to Rs 15.25 per kg, presuming they have paid an NC: 2024:KHC:30778 average price of Rs 12.50 per kg. Then they have incurred an expenditure of Rs 8 crores. The cost of 6397 MTs Rava at Karnataka State Agro Corn Products limited price of soya fortified rava @ Rs 10,500 per MT would be ($6397 \times 10,500 = 6.71$ crores) and therefore it is concluded that had the Karnataka State Agro Corn Products limited supplied all the committed quantity at Rs. 10.50 per kg the excess Rs 1.29 crores would not have been incurred by the Child Development project Officer's. Therefore, the Karnataka State Agro Corn Products limited is responsible for this loss caused to the Government.

3. The Corporation, acting upon Sri R.B. Agwane's report, has appointed Sri N.S. Sangolli, a retired District Judge, as an Inquiry Officer to investigate into the possibilities of PDS wheat being sold in the open market to make profits. This Court must observe that the contemplated investigation was into [i] the total quantity of wheat allotted to and lifted by the Corporation between the years 1993-1994 and 1996-1997, [ii] the total quantity of wheat issued to the private traders by the Corporation and the quantity lifted by them, quantity of wheat supplied by the private mills to the Corporation and the delay therein,

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NC: 2024:KHC:30778 and [iii] the quantity of energy food/energy food mixes supplied by the Corporation under the ICDS projects.

4. Sri N.S. Sangolli has filed his Report detailing his visits to the Corporation's processing units at Mysuru, Chitradurga, Doddaballapur and Raichur and his interaction with the personnel. Sri N.S. Sangolli's final conclusions in his Report are extracted hereafter, and he has also opined that the beneficiaries of the ICDS scheme are denied benefits, despite the public exchequer being expanded for those purposes, because of misunderstanding between the supplier and the receiver. The conclusion referred to above reads as under:

Thus, it is clear from the discussions made above with reference to the material available there is no proper execution of the scheme and that there is mis-use of PDS Wheat particularly by the General Manager and no proper financial control was exercised by Finance Manager in the Head Office and Unit Heads at each unit particularly Unit Head of Chitradurga at the relevant time. I have no hesitation here to opine that this sort of mishandling and mismanagement of allotment, lifting and using the PDS wheat has forced certain Zilla Panchayats to purchase rava at higher

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NC: 2024:KHC:30778 rates particularly, Mysore so that the object of the Scheme is achieved and the beneficiaries, i.e., Children, pregnant women, etc., are supplied Energy Food and Food Mixes. But as stated above it is General Manager and Finance Manager in the Head Office during that period and Unit heads of all the units generally and Unit head of Chitradurga unit during that period according to me are the cause for the failure of the scheme so to say."

5. These are the preliminary exercises undertaken by the State Government and the Corporation before the petitioners are served with the corresponding articles of charges. The details of the charges served on the petitioners¹ for misconduct are as follows. The general imputation of misconduct is dishonesty in connection with the business of the Corporation, willful insubordination, negligence or neglect of duties, disobedience of orders/instruction issued by the management, breach of Service Rules and causing huge financial loss to the Corporation.

1 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 The details of the charges against The conclusions of the Inquiry the petitioner in Officer [IO] W.P.No.50964/2012 - Sri. V.R. Somwanshi [Annexure G] [Annexure E] As regards Charge No.1 [charge 1(a)-(c)]

(a) The petitioner has failed to achieve optimum utilization of the unit's capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat rava and the history of such utilization before the committee while awarding contracts to private millers.

These charges are not proved as there is no evidence.

(b) The petitioner has failed to devise management of production schedules to meet the requirement of Department of Women and Child and therefore Contributing to the loss of Rs.1.29 crores.

(c) The petitioner has failed to maintain quality of production The petitioner has admitted in his cross examination that he As regards Charges 2(a) to (c): has accepted wheat rava 20 days prior to the date M/s.

Brundavan Flour Mills lifted

(a) The petitioner has not PDS Wheat and that the observed proper procedures petitioner has also admitted

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in engaging private milers for
converting wheat into wheat
rava and in allowing M/s.
Brundavan Flour Mills

Bengaluru to supply 39.730
MTS of wheat rava 20 days
prior to lifting of PDS wheat
in violation of the directives of
the Corporation.

that he has accepted 2.29
MTS of Wheat Rava 30 days
beyond the date this Flour
mill lifted wheat.

The petitioner neither
maintained the record of
quantity of PDS Wheat lifted

(b) In accepting 2.29 MTS of by the private millers nor wheat rava after a delay of maintained proper record of more 30 days from the date receipt of Wheat Rava from of supply of the PDS wheat. the private millers.

(c) Ignoring corporation's interests in receiving wheat The petitioner's admission rava supplies from M/s. should suffice and the Brundavana Flour Mills by not petitioner's explanation for ensuring quality and timely receiving 2.29 mts wheat delivery.

rava beyond 30 days viz., "Controlled Weighment of the last consignment" is not persuaded to take a different view.

Thus, charges 2(a), 2(b) and 2(c) require to be held as proved.

(d) The petitioner has suppressed This charge is not proved as information about the exact there is no evidence. time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

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NC: 2024:KHC:30778 Charge 3 and 4 These charges are not proved as there is no evidence.

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and mishandling the responsibilities as the Unit Head of Doddaballapur.

6. The Disciplinary Authority, while considering the Inquiry Officer's Report and the material introduced in evidence, has opined the following:

[A] that the IO has stuck to the material placed on record and the petitioner has neither stated why certain documents [marked as Annexure D series] are relevant and useful to him nor has he led any evidence in examination -in-chief to disprove charges.

[B] that the petitioner has not made any efforts to deny the contents in Ex M 1 [Sri NS Sangolli's Report] and Ex M2 [Sri. RB Agwane's Report] as being incorrect.

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NC: 2024:KHC:30778 [C] that Sri. NS Sangolli has opined that even the private millers engaged have benefited from the PDS Wheat lifted by them from the Corporation for conversion into wheat rava and this has resulted in the Corporation failing to honor its commitment to supply wheat rava to the concerned ICDS center within the agreed time ultimately compelling the Zilla Panchayats to make purchases from the open market by paying extra money and thereby incurring losses.

7. The Disciplinary Authority, though instances of misappropriation, embezzlement and negligence are not part of the imputations in the article of charges, has referred to various instances misappropriation and embezzlement of funds and negligence resulting in the failure of the Government's Scheme for benefit of the less fortunate class of people resulting with the punishment of termination from the services.

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NC: 2024:KHC:30778 The details of the charges The conclusions of the Inquiry against the petitioner in Officer [IO] W.P.No.35645/2012 - Sri T R Srinath [Enquiry Report in Annexure D] [Charge Sheet in Annexure A] These Charges framed against this petitioner are proved on the As regards Charge No.1 basis of the Sri NS Sangolli's [charge 1(a)-(c)] Report in Ex M Ex- 1. The findings of the IO are as follows:

(a) The petitioner has failed to achieve optimum utilization of the unit's • The petitioner, as seen in capacity by deliberately data of PDS Wheat lifted concealing the inhouse and received [Annexures capacity for conversion A1 and A2] during the of wheat into wheat years 1994-95 and 1995-

rava and the history of 1996], has not maintained such utilization before consistency or correlation the committee while between allotment and avoiding contracts to lifting of PDS Wheat from private millers. Food Corporation of India's Godown by private millers and receipt of wheat rava is in 100:50 ratio.

(b) The petitioner has failed to devise and manage production schedules to • The Mysore Unit has not meet the requirement of followed proper Department of Women procedures in connection and Child and with allotment of PDS Contributing to the loss Wheat to the unit, lifting of of Rs.1.29 crores. PDS Wheat by private millers and supply of Wheat Rava back to the

(c) The petitioner has unit.

failed to maintain
quality of production.

• The petitioner, who has

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As regards Charges 2(a) to
(d):

(a) The petitioner has not

got himself examined as
his defense witness, has
admitted in his cross
examination that there
was delay of 25 days and
more in respect of

observed proper acceptance of 8.262 MTS
procedures in engaging out of the total quantity of
private millers for 225 MTS of wheat rava
converting PDS wheat from M/s Manjunatha
into wheat rava and Flour Mills.

allowing north Karnataka Flour mills to lift wheat from godowns • at places other than the location.

The petitioner has himself contended that acceptance of delayed materials was within his powers.

- (b) The petitioner has accepted supplies of • 15.645 MTS of Wheat Rava from M/s Nandi Roller Flour Mills and

The petitioner has failed in achieving of the object of the ICDS Scheme.

22.845 MTS of Wheat These charges leveled against Rava from Manjunatha the petitioner are proved.

Flour Mills which were delayed beyond a period of 25 days and 22 days respectively.

- (c) The petitioner has ignored the interest of the corporation in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.

- (d) The petitioner has suppressed the information about the exact time of issue of wheat to the private millers and the time of

supply of wheat rava by these private millers.

Charge 3 and 4

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation, mishandling the responsibilities as the Head of the Weaning Food Unit Mysore.

8. The Disciplinary Authority has opined that there is no perversity in the IO relying upon the documents produced by the Corporation and the petitioner has not stated why certain documents [Annexure D series] marked from his side are relevant and useful to him nor has he led any evidence in examination-in-chief to disprove charges; that he has not asserted that contents in Sri N.S. Sangolli's Report and Sri. RB Agwane's Report are factually incorrect. The Disciplinary Authority has further opined that though the management's witness has been cross-examined at length, the veracity of evidence adduced on behalf of the management remains unshaken. Ultimately, the

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NC: 2024:KHC:30778 Disciplinary Authority, while opining that the petitioner's mismanagement of allotment of lifting the PDS Wheat and untimely delivery of Wheat Rava has compelled the Zilla Panchayats secure the same at higher rates in Mysore has caused loss to the Corporation has imposed the punishment of termination from services.

The details of the charges The conclusions of the Enquiry against the petitioner in Officer [IO] W.P.No.35646/2012 - Sri R. Ramesh Rao [Enquiry Report in Annexure F] [Charge Sheet in Annexure C] As regards Charge No.1 The IO, after a detailed reference [charge 1(a)-(c)] to Sri. N.S. Sangolli's report and the petitioner's cross examination, has concluded that all the

(a) The petitioner has failed charges leveled against the to achieve optimum petitioner are proved because of utilization of the unit's the following. capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat • The petitioner has not rava and the history of maintained documents in the such utilization before unit to show the capacity of the committee while the unit for the conversion of awarding contracts to wheat into wheat rava. This private millers. shows that the petitioner has not considered the optimum capacity of his unit before

(b) The petitioner's failure awarding contracts to private to manage production millers and not followed the

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schedules to meet the requirement of Department of Women and Child and Contributing to the loss of Rs.1.29 crores.

- (c) The petitioner's failure in maintaining the quality of production

As regards Charges 2(a) to (d):

- (a) The petitioner has not observed proper procedure in engaging private millers for converting wheat into wheat rava and has allowed the lifting of PDS Wheat by private millers without any authority and transferred it to the other units of the Corporation without following the guidelines laid down by the Corporation.

- (b) The petitioner has neither maintained the records of the quantity of PDS Wheat lifted by the private millers nor maintained proper record on receipts of wheat rava from the private millers more particularly from M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill.

procedure in engaging the private millers.

- Sri. NS Sangolli's report and certain data show that ratio of the wheat is to wheat rava supplied by millers is in 100:50 but it should have been 100:100.
- The petitioner has not carried out proper procedures to engage private millers.
- Since the petitioner has not maintained the dates of supply of Wheat Rava from the private traders, some items of supplies were found to be delayed by 20 to 60 days and thereby affecting the quality of supplies.

- (c) The petitioner has delayed supplies of 20 MTS of Wheat Rava from M/s Srinivasa Industries, Raichur and 150 MTS of Wheat Rava from M/s North Karnataka Roller Flour Mill, Belgaum by a delay of 20 days and 60 days respectively over the acceptable timeline.
- (d) The petitioner has ignored the Corporation's interest in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.
- (e) The petitioner has not suppressed information about the exact time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

As Regards Charge 3,4 and 5:

Charge 3:

The petitioner has lifted 2046.236 MTS of Wheat from Food Corporation of India and sent the same to units at Doddaballapur and Mysore without proper authorization and thereby causing financial losses to the company and in contravention to the directives

of the Corporation issued in March 1996.

Charge 4 and 5:

The petitioner is knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and has mishandled the responsibility entrusted to you as the Unit Head for the Weaning Food Unit at Chitradurga and are indirectly responsible for the financial losses.

9. The Disciplinary Authority has opined,

referring to the instances of by M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill lifting wheat as mentioned in Sri. NS Sangolli's report, that the petitioner has not followed proper procedures in engaging private millers for converting wheat into wheat rava. As regards the non-consideration of the capacity of the unit before awarding contracts to the private millers, the Disciplinary Authority has concurred with the IO's findings. Further, the Disciplinary Authority, as in the case of the

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NC: 2024:KHC:30778 other two instances, has considered various instances of the petitioner's misappropriation and embezzlement of funds before imposing punishment. This petitioner is also imposed with the punishment of termination from the services.

10. The petitioner in W.P.No.50964/2012 [Sri V. R. Somwanshi]2 has impugned the Disciplinary Authority's order dated 25.01.2006 as also the Appellate Authority's order dated 20.03.2007 in W.P.No.15650/2006 apart from the show cause notices/ and orders issued for forfeiture of certain losses to the corporation because of his alleged failures in supply of soya milk. This W.P.No.15650/2006 is disposed of on 20.09.2011 quashing the Appellate Authority's order dated

20.03.2007 restoring the matter to the Appellate Authority observing that this authority shall consider the grounds of appeal and pass just orders. This Court must record that it is clarified that the appellate authority must ascertain whether the petitioner is 2 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 directly involved in the financial irregularities. This Court's order in this regard reads as under:

"In that view of the matter, it is ordered, the order of the appellate authority is quashed and the matter is remitted to the appellate authority who shall take into consideration the ground of appeal and pass appropriate orders. It is also made clear, whether the petitioner is directly involved in financial irregularity or not is a matter to be ascertained by the appellate authority."

11. Sri V.R. Somwanshi has carried this order in intra court appeal in W.A.No.17026/2011 and during its pendency, the appellate authority has disposed of the appeal by its order dated 03.01.2012. The Division Bench in view of this order dated 03.01.2012 has disposed of the writ appeal in W.A.No.17026/2011 on 24.09.2012 observing that the appeal is rendered infructuous and reserving liberty to challenge such order leaving open all contentions to be considered.

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12. The Appellate Authority, while considering the question whether Sri. V.R. Somwanshi is responsible for the financial irregularities, has re-iterated the earlier conclusion that the Unit Heads of concerned/DGM - Finance must be held responsible for the loss caused to the Government in the implementation of ICDS project; that the Unit Heads had the responsibility to ensure delivery of products as prescribed by the Government and according to the standards prescribed, and because Sri V.R. Somwanshi, as a Unit Head, has not conformed to the specifications, he must be held liable for the financial losses caused to the Corporation. The Appellate Authority has also referred to the opinion of the Disciplinary Authority that the punishment of termination from service is justified not only because of the present charges but also instances of earlier misappropriation and embezzlement.

13. The petitioners in W.P.No.35645/2012 and W.P. No. 35646/2012 [Sri T.R. Srinath and Sri R Ramesh Rao respectively] have also filed their corresponding writ

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NC: 2024:KHC:30778 petitions in W.P.No.17095/2007 and 17092/2007 impugning the show cause notices issued to them and the Disciplinary Authority's orders. These writ petitions are disposed of

by a common order dated 18.02.2011, and once again remitting the matter to the Appellate Authority to dispose of the appeal filed by them in accordance with the grounds urged in the appeal memorandum. The petitioners have carried this common order in intra court appeals in W.A.No.18049/2011 and 18045/2011. The petitioners have filed Memo/s for withdrawal placing on record that the Appellate Authority has passed orders in the month of January 2012 and that they may be given liberty to call in question such orders. The afore writ appeals are disposed of on 21.06.2012 in view of the memo filed by them and reserving liberty.

14. The Appellate authority has disposed of these petitioners' appeals with conclusions which read as follows:

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NC: 2024:KHC:30778 The Dismissal from services of the company is the appropriate penalty for the proved charges of misconduct. The disciplinary authority has taken a lenient view and also to meet the end of justice used the word 'termination' which was upheld by the Appellate Authority. More so, the word 'termination' is as good as dismissal. Literally, termination means "to bring or to come to an end or limit". Dismissal means to send or put away. In both cases the service of an employee is put to an end. So considering the grounds urged by Sri T.R. Srinath and Sri Ramesh Rao are to be dismissed from services under 8.3 (vii) of the Service Rules of KSACL.

15. Sri P.S. Rajagopal, the learned Senior Counsel for the petitioners, submits that this Court must interfere with the Disciplinary and Appellate Authorities' orders because [i] the charges against the petitioners are vague and they have not been given fair opportunity; [ii] there is no evidence against the petitioners to opine that the charges [as vague as they are] are proved; [iii] the Disciplinary Authority has travelled beyond the charges in opining that the imputations of financial and other

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NC: 2024:KHC:30778 irregularities amounting to misconduct are proved because of certain antecedent allegations of misappropriation and embezzlement though they are not mentioned in the charges; [iv] the Corporation's Service Rules do not even contemplate termination from service.

16. Sri P.S. Rajagopal elaborates on these grounds as follows.

On charges against the petitioners being general in nature and vague:

16.1 The imputations against the petitioners are such as that they have failed to achieve Optimum utilization of inhouse capacity, that they failed to devise and manage production schedules, and that they have not observed proper procedure in engaging private millers for converting wheat into wheat rava. In the case of Sri. V R Somwanshi the first of the afore allegations is said not to be proved but in the case of Sri R. Ramesh Rao and Sri T R Srinath, crucially based on the very same evidence, it

is opined that the allegations are proved.

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NC: 2024:KHC:30778 16.2 According to the Corporation, the proven charges against Sri V.R. Somvanshi are that he received 2.29 mts of wheat rava even before wheat was supplied and a certain other quantity of wheat rava was received beyond the prescribed period and that he has not followed the Guidelines in engaging the services of private millers. However, the charges do not even mention the details of the procedure that he was required to follow. The Corporation has referred to its directives in the matter of engaging private millers, for supply of wheat and for receipt of wheat rava but these directives are not mentioned in the charges.

16.3 In the case of Sri R Ramesh Rao and Sri T.R. Srinath the other imputations are that they have not observed proper procedure in engaging private millers, that wheat is delivered to private millers without due authorization and without following the Corporation's Guidelines, that they have permitted certain private millers, even outside their zones, to lift wheat without proper records. Even as against these allegations, the relevant

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NC: 2024:KHC:30778 Guidelines are not mentioned in the charges and the charges do not mention the quantities that these petitioners have supplied without records.

16.4 The petitioners have been denied a fair opportunity to know the specific charges against them because the charges against them are completely silent about the Directives/ Guidelines issued and the specific instances where there is either delay in receiving wheat rava or in allowing private millers to lift wheat, or in wheat rava being delivered even before lifting wheat. The charges against the petitioners should have been specific furnishing all the necessary details to afford them a fair opportunity of defending themselves against the imputations.

16.5 On the question of vagueness of charges, it is settled law that a plain reading of the charges and the statement of stipulations [if any], must show the exact nature of the allegations. The requirement in law for charges to be specific is embedded in the basic principle that a reasonable and adequate opportunity must be extended to

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NC: 2024:KHC:30778 the delinquent to defend himself/herself and if the delinquent is not told clearly and definitely what the allegations are against him, he/she cannot project defense imagining the circumstances in which the allegations are made. The Apex Court, in Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another³ when vague charges were made against a Bank official, has set aside the subject orders reiterating the afore proposition on definite charges affording a reasonable opportunity as enunciated in its earlier decision in Surath Chandra Chakrabarty v. State of West Bengal⁴.

On lack of evidence to reasonably conclude that the Charges against the petitioners are proved:

16.6 The corporation has examined Sri R. B. Agwane and Sri N.S. Sangolli and marked their reports in evidence. This is the only evidence placed on records.

However, Sri R.B. Agwane's report is not marked in its entirety and the portion marked does not bear his signature. 3 [2011] 14 SCC 379 4 2009 (12) SCC 78

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NC: 2024:KHC:30778 The report has certain annexures, and even those annexures are not marked. Sri N.S. Sangolli's report is marked but such report is based on interaction with certain persons at the units, but the statements recorded during such interaction are not placed on record.

16.7 The Inquiry Officer based on these documents has concluded that the charges as against the petitioners are proved because of reasons such as that they have not undermined the ocular evidence or the efficacy of the reports but has overlooked that the allegations related to transactions done over a period of time and not substantiated by any evidence. The conclusions against Sri Ramesh Rao and Sri T R Srinath based on ratio in the supply of wheat and receipt of wheat rava is presumptuous and not backed by documents apart from being inconsistent.

16.8 As against Sri V.R. Somavamshi, the Inquiry Officer, without any evidence, has opined that he has not maintained any records and the petitioner has admitted that he has received wheat rava beyond 30 days

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NC: 2024:KHC:30778 and even before supplying wheat. Similarly, as regards the imputations against Sri R. Ramesh Rao and Sri T.R. Srinath, the reliance is only on Sri N.S. Sangolli's report and certain data. The report, even if it could be relevant, should have been supported by the ocular evidence of those who have given statements, or in the least by furnishing and producing the statements recorded during the relevant time.

16.9 Sri N.S. Sangolli has not specifically spoken about the procedure that was required to be followed or the records not maintained to indicate the alleged breach. The Inquiry Officer, as in the case of Sri. V.R. Somwanshi even in the case of these two persons, has opined that there is an admission about receiving belatedly certain quantity of wheat rava, but these observations are totally contrary to the evidence on record as none of the three have admitted to anything.

16.10 The settled law is that there must be fairness in the conduct of the proceedings because such fairness will be part of the principles of natural justice. In

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NC: 2024:KHC:30778 the present case, only if all the relevant material to show the prescribed procedures and the breach were brought on record, it could be opined that the petitioners were given opportunity and if these materials are not brought on record, this Court must opine that the proceedings are not in accordance with fair play.

As against the Disciplinary Authority going beyond the Charges in opining that the imputations are proved.

16.11 The charges against the petitioners, though vague, are because of certain imputations, but the Disciplinary Authority has proceeded to opine that they must suffer termination from service because of other instances of wrong doing in procuring fortified food for different schemes and because they have displayed a consistent conduct of causing loss to the Corporation and that it will not be in the Corporation's interest to continue the petitioners' services. Irrefutably these other allegations are completely outside the purview of the imputations made

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NC: 2024:KHC:30778 against the petitioners as part of the article of charges served on them.

16.12 The Disciplinary Authority, even if it could have opined that the petitioners must suffer the extreme punishment of termination from service [dismissal from service], it should have been based only on the charges served on them and not because of any allegation that is extraneous to such charges. The Disciplinary Authority has thus, traversed beyond the charges and the material placed on record in opining that the petitioners must suffer termination from service, and the Appellate Authority has completely overlooked this aspect.

16.13 To underscore that the Disciplinary Authority's decision cannot be on the basis of surmises and presumption; that there must be acceptable proof [evidence] of the imputations; that there must be fair in Inquiry proceedings; that an Inquiry Officer cannot travel beyond the records to opine that person is guilty and if the inquiry officer thus go beyond the records, any disciplinary action

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NC: 2024:KHC:30778 based is only illegal, reliance is placed upon the decision of the Apex Court in Narinder Mohan Arya v. United India Insurance Company Limited⁵, while inviting this Court's attention more specifically to paragraph 26 thereof. On the orders for forfeiture and termination:

16.14 The Corporation has caused orders and show cause notices to the petitioners alleging that, because of their negligence and alleged violation of the respective directors/guidelines, they have caused financial losses to the Corporation and therefore, the salary, gratuity and earned leave must be forfeited. The Service Rules do not contemplate forfeiture and the Rules contemplate recovery when there is proven financial loss either because of negligence or breach of orders, but the

Disciplinary Authority in forfeiting the amount/s as indicated above has imposed a punishment that is not contemplated under the Service Rules.

5 2006 (4) SCC 713

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NC: 2024:KHC:30778 16.15 As regards the petitioners' case that they are essentially terminated from service and that termination is not contemplated as penalties under the Corporation's Service Rules, it is canvassed that the only punishments that are contemplated is [a] dismissal from service, [b] compulsory retirement, [c] reduction to a lower grade or post or lower time scale or lower stage in time scale and [d] recovery from pay the actual pecuniary loss caused by negligence or breach⁶. It is also canvassed that the termination from service is only when there is contractual employment not otherwise⁷.

16.16 The decision of the Apex Court in Vijay Singh v. State of Uttar Pradesh and Others⁸ is relied upon. Apart from recovery of the losses caused, and imposing fines, censuring and withholding increment.
7 Rule 8.3 explanations (vi) and (vii) of the Corporation's Service Rules:

(vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement.

(vii) Termination of an employees on administrative grounds other than disciplinary measures as provided under the Rules, as the said authority may specify, where no such provision specify, the employees shall be paid 50% of the basic pay and dearness allowances based on such amount

8 2012 (5) SCC 242

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NC: 2024:KHC:30778 upon to buttress the petitioner's case that the disciplinary proceedings are regulated and controlled by the statutory rules, and therefore, the disciplinary authorities while performing the quasi-judicial function, are not permitted to ignore the statutory rules. The contention is that there must be strict adherence to the Rules and any punishment outside the purview of the statutory rules is a nullity and cannot be enforced against the petitioner. The reliance is on the following paragraph from this decision.

"15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

17. Sri. M. Subramanya, the learned counsel for the Corporation, submits that the petitions insofar as they are filed challenging the Disciplinary Authority's orders cannot be sustained, and if at all the petitioners could be

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NC: 2024:KHC:30778 aggrieved, it could only be as against the Appellate Authority's order dated 03.01.2012. The learned counsel submits that when the petitioners first impugned the Disciplinary Authority's orders before this Court in the earlier writ proceedings, this Court has categorically opined that the Disciplinary Authority's orders cannot be faulted because of the findings recorded by the Inquiry Officer, and that this Court has also concluded that the petitioners have been granted sufficient opportunities and there is no error in the decision making process.

18. Sri. M..Subramanya argues that the petitioners' have called in question this Court's orders in their corresponding intra-court appeals, but these appeals are disposed of because of the memo filed by the petitioners, and such disposal does not in any manner dilute the findings as regards the decision making process and the merits of the Disciplinary Authority's order. The learned Counsel also canvasses that the petitioners who have participated in the inquiry proceedings without contending

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NC: 2024:KHC:30778 that the charges are vague cannot now raise such ground now, especially after the first round of litigation.

18.1 Sri. M. Subramanya next submits that each of the petitioners has categorically admitted in the cross examination that they did not have the authority to receive wheat rava belatedly or to receive rava even before the Millers are permitted to lift wheat. In this regard, the learned counsel relies upon the following in the Disciplinary Authority's order in the case of V.R. Somwanshi:

The charge sheet officer has admitted in his cross examination that it is true that he accepted wheat rawa 20 days prior to the lifting of wheat by Brundhavan Flour Mills. He has accepted delayed receipt exceeding 30 days over and above the acceptable period.

Sri. V.R.Somavamshi has come out with truth in his cross examination that he has accepted 2.29 metric tons of wheat rawa after delay of 30 days from Brundhavan Flour mills but the reason given by him that it was controlled weighment of the last

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NC: 2024:KHC:30778 consignment does not convince me to take a different view.

Insofar as Sri R. Ramesh Rao and Sri T.R. Srinath, the learned counsel canvasses that the Inquiry Officer, based on the suggestions by these officers to the Corporation's witnesses [and materials produced by these persons], has opined that documents have not been maintained to show the capacity of the units under their supervision, that the dates of supply from private traders are not maintained and the wheat rawa is received in different ratios though as per the agreement dated 06.09.1996 the wheat rawa had to be supplied in the ratio of 100:100.

18.2 Sri M.Subramanya submits that the Inquiry Officer has considered evidence viz., the suggestions in the cross examination of the witnesses, the documents produced by the petitioners and the two reports. Therefore, it cannot be gainsaid that the Inquiry Officer's opinion and the Disciplinary Authority's orders are based on evidence. The learned counsel proposes to rely upon the decision of the

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NC: 2024:KHC:30778 Apex Court in the State Of Haryana Vs Ratan Singh reported in AIR 1977 SC 1512 to contend that the provisions of the Indian Evidence Act,1872 are not required to be complied with while conducting an inquiry and that if reasonable and credible material are brought on record, the conclusions arrived at in the departmental proceedings cannot be interfered with. The learned counsel emphasizes the following exposition in the decision.

"4. It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act, 1872 may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case- law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

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NC: 2024:KHC:30778 18.3 The learned counsel also relies upon several decisions of the Apex Court to contend that Courts will not interfere with the findings in disciplinary matters unless it is shown that the conclusions are clearly without evidence or perverse, and that the Courts will not substitute its conclusions either in the matter of credibility of evidence or quantum of punishment, but there is no detailed reference to these authorities in view of the fact that Sri. P.S.Rajagopal does not dispute the propositions underscored by these decisions.

19. In the light of the rival submissions, the questions for consideration are as follows:

[a] Whether this Court must interfere with the Disciplinary/ Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence.

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NC: 2024:KHC:30778 [b] Whether the impugned orders are vitiated in law because the Disciplinary/Appellate Authorities have considered material and circumstances that are extraneous to the Charges served on the petitioners.

[c] Whether the petitioners are served with penalty which is beyond the contemplation of the Services Rules.

[d] Whether there is any justification for interference with the decision to recover any amount from the petitioners' salary and gratuity/encashment of earned leave.

20. This Court, even before these questions are considered, must examine whether these questions would be open for consideration in view of the conclusions in the earlier writ proceedings. The petitioners have impugned the Disciplinary Authority's impugned orders in the first round of litigation, and indeed each of these writ petitions are disposed of with certain observations. These observations are essentially in the context of the narrow band within which the grievances against the conclusion of the

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NC: 2024:KHC:30778 disciplinary proceedings are examined, and this Court has opined that the petitioners have not been able to demonstrate any fallacy in the decision-making process as they are given sufficient opportunity.

20.1 However, this opinion has not remained the last words on the controversy inasmuch as each of the petitioners have called in question such opinion in their corresponding intra court appeals but without the advantage of interim order as against the limited relief of remand granted by this Court calling upon the Appellant Authority to examine their grievance that the Disciplinary Authority's decision to terminate their services is despite the fact that termination is not contemplated as a penalty under Rule 8 of the Service Rules. As such, the Appellate Authority, during the pendency of these intra court appeals, has examined this grievance, and when it is brought to the notice of the concerned Division Benches, either with a memo or otherwise, the writ appeals are disposed of with liberty.

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NC: 2024:KHC:30778 20.2 This Court must refer to the orders of the concerned Division Bench in writ appeal in WA No. 17026/2011 [writ appeal by Sri V R Somawamshi], and this order essentially reads as under:

According to the learned counsel for the respondent No.2, this appeal has become infructuous because pursuant to the appellant's signature, the appellant authority has already passed an order in the month of January 2012. If it is so, we are of the view that the present appeal is become infructuous. If the petitioner is aggrieved by the order passed by the appellant authority, is at liberty to challenge the same. All contentions are kept open.

The orders in the other two intra court appeal, reserving liberty, are essentially because of memo/s filed with a request to call in question the Appellant Authority subsequent orders dated 03.01.2012 leaving all contentions open.

20.3 The question, whether the petitioners' grievance as against the Disciplinary Authority's orders

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NC: 2024:KHC:30778 remains open for consideration, will have to essentially turn on the expanse of the liberty reserved by the Division Bench. The petitioners' grievance with this Court's opinion on they being given sufficient opportunity and that there is no fallacy in the Disciplinary Authority's orders was pending consideration in the intra court appeals, which are disposed of because of the Appellate Authority subsequent orders on the question whether the petitioners' services could be terminated under the Service Rules without examining the petitioners' grievance as against this Court's opinion. If the Division Benches were of the opinion that the petitioners cannot have any grievance as against this Court's opinion, it would not be unreasonable to opine that there would have been a categorical and unequivocal expression in that regard, or in the least a qualified liberty reserved only to challenge the Appellate Authority's orders.

20.4 In the absence of either any comment by the Division Benches on the petitioners' grievance as against this Court's conclusion or limiting the liberty reserve to call in question just the appellate authority's orders in specific

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NC: 2024:KHC:30778 terms, this Court is of the considered view that the examination in the present proceedings cannot be limited just to the merits of the Appellate Authority's orders. This Court refer to the expressions "all contentions are kept open"

and "reserving liberty" employed by the Division Benches.

As such, the questions framed must be examined for a decision on merits.

On Question [a]9

21. The essence of the charges against the petitioner is that [a] they have deliberately not achieved optimum utilization of the concerned units capacity and they have suppressed the necessary details from the concerned resulting in the decision to award the contract a private millers, [b] they have not managed production scheduling, [c] there is either delay in receiving wheat rava from the private millers or they have received wheat rava even before supplying wheat to the millers, [d] they have 9 Whether this Court must interfere the Discipline/Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence

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NC: 2024:KHC:30778 received wheat rava in the ratio far lesser than the prescribed ratio [100:50 as against 100:100], [e] they have permitted private millers, even millers from outside the jurisdiction, to draw wheat without records. The imputation is that the petitioners have been deliberate and negligent in the above intending to cause pecuniary losses to the corporation.

22. The Apex Court in Surath Chandra Chakrabarty vs. State of Bengal and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another [supra] has held that the grounds on which disciplinary action is proposed must be reduced to the form of a definite charge/s and they have to be communicated to the person concerned and that this rule embodies the principle that specific contents afford a reasonable and adequate opportunity for defending oneself. The Apex Court has also opined that if a person is not actually informed about the allegations in clear and definite terms, he cannot possibly, by projecting his own imagination, discover all facts and

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NC: 2024:KHC:30778 circumstances that may be in the contemplation against him.

22.1 The Apex Court in its later decision in Anant R. Kulkarni vs. Y.P.Education Society and others¹⁰, referring to these decisions and also certain earlier decisions, has reiterated these propositions in the following terms:

Thus, nowhere should a delinquent be served a charge- sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge- sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which

formed the basis of charges and no enquiry can be sustained on vague charges.

10 2013 6 SCC 516

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NC: 2024:KHC:30778 22.2 The first set of charges against the petitioners is that they have failed to achieve optimum utilization of the corresponding Unit's capacity. The petitioners contend that this charge is vague because the Corporation has not indicated the necessary material in the charge sheet to justify that there was a certain fixed Optimum Capacity and that the petitioners have failed to achieve the same on one particular occasion, or on multiple occasions. Their case is that these and other details had to be produced. Admittedly, the petitioners have functioned as the respective unit heads over a period of time. This Court must opine that if the imputation is that there was a certain Optimum Capacity, and the units were not put to full use of such capacity, it was incumbent upon the Corporation to furnish these two indices and the details of the period during which there is shortfall. This Court must also opine that if these details are furnished as charges/statement of imputations such charges and imputation will lack details and therefore, vague.

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NC: 2024:KHC:30778 22.3 It is argued on behalf of the Corporation that the petitioners have participated in the proceedings and at this stage, they cannot raise this ground. However, the Apex Court has clearly exposed that if the charges are vague and the evidence adduced is perfunctory, the proceedings are not saved only because the concerned have not taken a defense in this regard and the dispositive test is whether the concerned knew about the allegation.

22.4 Significantly, in the case of Sri. V.R. Somwanshi on similar charge [the failure to optimize capacity], the Inquiry Officer has opined that the charge is not proved, but in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, the Inquiry Officer has opined that the charges are proved. This Court, in the light of the discussion in the Inquiry Report/ Disciplinary Authority's Orders [the Appellate Authority has not considered these aspects] cannot discern how it could be so in one case and not in the other cases. Perhaps it could be observed that the vagueness in the charge has even confused the Inquiry Officer and the Disciplinary Authority.

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NC: 2024:KHC:30778 22.5 The other charges against the petitioners are that they have either received wheat rava beyond the scheduled period or even before supply of wheat. In the case of Sri. V.R. Somwanshi it is alleged that the corresponding numbers are 39.730 mts and 2.29 mts. On his behalf it is contended that he was working as unit head over a period of time and there is supply of wheat and receive of wheat rava during this period and that unless the charge specifically mentioned that he received a particular quantity during a particular period or supplied a particular quantity during a particular period, he could not have defended against this allegation.

22.6 This Court must observe that there is considerable force in this contention. If Sri. V.R. Somwanshi was indeed put on notice, as part of the charges, that he had during a particular period, either received wheat rava without supply of wheat or received wheat rava beyond a particular time, he would have known what he was up

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NC: 2024:KHC:30778 against. The Inquiry Officer¹¹ has opined that the charges against the Sri. V.R. Somwanshi are proved because he has admitted in his cross-examination that he has received the aforesaid quantities.

22.7 The Disciplinary Authority has extracted cross examination by Sri V R Somwanshi [as also the other petitioners in the corresponding orders and the extracted portions in each of the orders are the same]. However this Court, on reading of such extracts, must observe that there is no such admission either by Sri V R Somwamshi or the others. Therefore, the opinion that there is admission and as such there is proof of the charge is wholly erroneous. ¹¹ "The charge sheeted officer has admitted in his cross-

examination that it is true that he accepted wheat rava 20 days prior to the lifting of wheat by Brindavan Flour Mills.... Sri. Somwanshi has come out with truth in his cross- examination that he has accepted 2.29 M.Ts of wheat rava after delay of more than 30 days from Brindavan Roller Flour Mills, Bangalore. But the reason given by him that it was on account of controlled wighment of the last consignment does not convince me to take a different view of the matter."

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NC: 2024:KHC:30778 22.8 Indeed, it is trite that strict rules of evidence, will not apply in departmental proceedings, but the requirement of definite charges and believable evidence is a part of fair play that is integral to the proceedings. In this context, this Court must observe that the purported admission, though not required to be of the sterling quality as it should be under the general rules of evidence, it must reasonably indicate a categorical acknowledgement.

22.9 The next set of charges are that both Sri. R. Ramesh Rao and Sri. T.R. Srinath have not observed proper procedure in engaging the services of private millers and they have permitted the private millers to lift wheat without due authorization and without maintaining records. Here again, the charges do not mention the prescribed parameters that were required to be followed to afford a reasonable opportunity to them to offer a plausible explanation to vindicate their stand that charges are falsely laid against them. This Court must opine that they would have been extended a reasonable opportunity only if they

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NC: 2024:KHC:30778 were put on notice of the relevant directives and guidelines issued and the specific instances of failure.

22.10 The Inquiry Officer and Disciplinary Authority have opined that these charges, which in this Court's opinion are vague, are proved because of a certain ratio that was required to be maintained in the supply of wheat and receipt of wheat rava relying upon certain observations in the reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane without indicating the definite roles played by each of these petitioners. As regards the ratios and the details referred to in these reports and the efficacy of such reports, this Court must observe that it is based on data and orders and agreement concluded by the Corporation. However, this agreement is not referred to in the charge or in the material brought on record. The report also refers to ratio of 100:50, 100:75 and 100:100, and if any particular ratio is to be the dispositive factor, the petitioners should have been put on notice of the period during which that fallen short and if they have fallen short by varying ratios for over a period of time, the details thereof.

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NC: 2024:KHC:30778 22.11 Further, the reports have certain annexures, and those annexures have not been introduced as evidence. In the absence of specific instances of failure to comply with the directives on engaging the services of private millers or the inadequacies and maintaining the records, this Court must opine that the vague and uncertain charges are held to be proved on the basis of no evidence. This Court must observe that these conclusions must also extend to other imputations such as failure to ensure implementation of the scheme and supply of wheat to millers outside what is described as the Units' area of operation.

22.12 This Court must therefore opine that the inquiry proceedings are commenced on the basis of vague and indefinite charges and the Inquiry Reports are filed opining that charges are proved without definite evidence and that the Disciplinary Authority has accepted these conclusions without considering the circumstances but only extracting extensively the contents of the Reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane and Inquiry

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NC: 2024:KHC:30778 Reports. The Appellate Authority, which should have gone into all the details, has also not gone into these details. This has resulted in the petitioners suffering a penalty without fair opportunity. Hence, the question [a] framed is answered accordingly.

On Question [b]12

23. The Disciplinary Authority, in the case of Sri. V.R. Somwanshi, after referring to the Inquiry Officer's report on the charges and the evidence as against such charges has also referred to certain instances to opine that he is not a person in whom any faith or trust could be reposed. The instances referred to are as follows:

- a) The alleged embezzlement of certain funds showing exorbitant expenditure during National Maize Mela 2001.

b) The allegation of utilization of substandard jaggery, dal and wheat for manufacture of energy food, during the year 1998-99.

12 Whether the impugned orders are vitiated in law because the Disciplinary Authority has considered material and circumstances that are extraneous to the Charges served on the petitioners

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c) The payment of higher rate of commission to M/s. Colonac International Limited, Chennai for the purchase of 36,524 gunny bags.

d) The alleged loses to the Corporation when he was working with the Corporations maize mill at Bengaluru.

23.1 This Court, on perusal of the Disciplinary Authority's order in this regard, must observe that the decision to impose the penalty of termination of the Sri. V. R Somwanshi's services is entwined by the consideration of the aforesaid circumstances along with the consideration of the Inquiry Officer's report. In the absence of any reference of these materials in the article of charge served on Sri. V.R. Somwanshi, this Court must opine that extraneous consideration have gone into the decision.

23.2 Similarly, in the case of Sri. R. Ramesh Rao, the Disciplinary Authority has referred to the alleged exorbitant rates paid to M/s. Christy Fried Gram Industries for purchase of ragi malt flour and the manner in which the responsibilities are discharged by him as the Chief Division

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NC: 2024:KHC:30778 Manger when he was posted as the Corporation's Head Office in Bengaluru, these instances are also not part of the article of charges. In the case of Sri. T.R. Srinath, though no specific instances as in the above two cases are mentioned, there is a general reference to he defrauding the company exhibiting "height of negligence and he being a security risk to the Corporation".

23.3 This Court must observe that these observations are not because of the outcome of the Inquiry proceedings but a general assessment of circumstances outside the scope of the inquiry to opine that the petitioners have failed to work with honesty and sincerity. These considerations must be held to be totally extraneous to the disciplinary proceedings and is in violation of the principles of natural justice because the inquiries are instituted not only to establish the truth but also to extend a reasonable opportunity to the concerned to establish his defense or vindicate his position for exoneration against specific charges. Hence, the question [b] framed is answered accordingly.

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NC: 2024:KHC:30778 On Question [c]13

24. The Disciplinary Authority, by the impugned orders, has directed the termination of the petitioners from their services, and it is contended that the Service Rules do not contemplate termination of a permanent employee, and the Rules contemplate termination of only those employees who are in contractual employment. This contention is in the light of the provisions of Rule 8.3 of the Service Rules which read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

- i)
- ii)
- iii)
- iv)
- v) Reduction to a lower grade or post or to a lower time scale or to a lower stage in a time scale;
- vi) Compulsory retirement.
- vii) Dismissal from service.

13 Whether the petitioners are served with penalty, which is beyond the contemplation of the Services Rules.

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NC: 2024:KHC:30778 Explanation:

The following shall not amount to a penalty within the meaning of this rule.

- i)
- ii)
- iii)
- iv)

v)

vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement and

vii) Termination of services of employees on administrative grounds other than a disciplinary measure as provided for under the rules, as the said authority may in its discretion specify; and where no such proposition specified the employees shall be paid 50% of his basic pay and dearness allowance based on such amount."

24.1 It is trite that the expression dismissal and termination do not mean the same and they have their respective connotations though both bring about ceasing of employment. Generally, dismissal is a penalty imposed after opportunity under the relevant Service Rules as is required under Article 311 of the Constitution of India, and termination is not so as it will be upon contractual terms.

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NC: 2024:KHC:30778 As such, dismissal is stigmatic while the termination is not. Further, dismissal will result in denial of benefits, and termination need not be so as certain amounts may have to be paid according to the contractual terms.

24.2 The Corporation's Service Rules provide for both dismissal and termination of permanent employees. This Court must refer to Rule 2- 21 of the Service Rules apart from Rule 8. The termination under Rule 8-3 Explanation (vii) is for administrative reasons and other than as a disciplinary measure. If there is termination for administrative reasons, the concerned may specify the terms of severance, and if terms are not specified, the later part of the Explanation will come into play. Further, the provisions of Rule 2-21 of the Service Rules contemplate termination of a permanent [and a temporary] employee but on certain varying terms regarding notice period and the amount payable in lieu thereof. Crucially, for the purposes of the present case, this Court must opine that if there are disciplinary proceedings, the termination will be Dismissal

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NC: 2024:KHC:30778 from Service as contemplated under Rule 8-3(vii) of the Service Rules.

24.3 The petitioners have been extended opportunity to respond to certain imputations, and thereafter a decision, though not found justifiable because of the reasons as aforesaid, is taken to dismiss the petitioners. It is nobody's case that the petitioners are terminated for administrative grounds independent of the disciplinary proceedings. Therefore, this Court must opine that the petitioners have been served with the penalty of dismissal from service, and the Appellate Authority's reference to the provisions of Rule 8.3(vii) in its order dated 03.01.2012 is of no significance in the circumstances discussed. Therefore, this Court will not interfere with the orders of the Disciplinary Authority or Appellate Authority on the ground that the Corporation has travelled beyond the Service Rules in this regard.

On Question [d]14 14 Whether there is any justification for interference with the decision to recover from the petitioners' salary/gratuity/encashment of earned leave

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NC: 2024:KHC:30778

25. The decision to forfeit/ recover certain amounts from the amounts payable to the petitioners is not just because of the disciplinary proceedings discussed above, but also because of the conclusion in certain other proceedings and because of the show cause notices issued as regards certain alleged losses caused to the Corporation. In the case of Sri. V.R. Somwanshi, the decision to recover / forfeit is based on the departmental proceedings conducted by the Inquiry Officer Sri. Sosale Indudhar and certain show cause notices issued and the anticipation of the culmination of the civil proceedings, and in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, it is because of the aforesaid disciplinary proceedings and certain losses alleged caused to the Corporation because of other transactions.

26. The details of the orders/ show cause notices and the nature of the amount/s proposed to be recovered/ forfeited are as follows:

The petitioner's name/ The The amount and its nature impugned Orders /Show recovered/ forfeited Cause Notices in this regard

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NC: 2024:KHC:30778 Sri. V R Somwanshi Rs. 2,45,409/- [Gratuity] and Rs 2,00,831/- [Leave Encashment] i] Order dated 20.03.2007 [Annexure AD] As against an ascertained loss of Rs. 80,71,152/-

ii] Order dated 28.05.2007 Rs. 18,518/- [Salary] [Annexure AF] As against loss of Rs. 27,903] caused the remaining [Rs. 9,385/-] to be collected by filing a civil suit.

Sri. T.R Srinath Rs. 15,435/- [salary]

Dated 25/27.01.2007 in Rs. 2,93,725 [Gratuity] and
Annexure N

Rs. 1,26,135/- [Leave
Encashment]

For recovery of a sum of Rs.
32,25,000/- with direction to
recover the remaining Rs.

27,89,705/- by filing a civil suit.

Sri R Ramesh Rao

Rs. 15,153 [Salary]

Dated 25/27.01.2007 in
Annexure R

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NC: 2024:KHC:30778

For recovery of Rs. 32,25,000/,
and to recover the remaining Rs.
32,09,847/- by filing a civil suit

26.1 The question whether the Corporation can forfeit the salaries, gratuity and Leave Encashment to recover its dues must be necessarily examined in the light of the provisions of Rule 8.3(v) and Rule 4-17 Note ii of the Service Rules and the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 in the light of decisions of the Apex Court in Mahanadi Coalfields Ltd. v. Ravindranath Choubey¹⁵ and Jyotirmay Ray v. Field General Manager, Punjab National Bank¹⁶. The Apex Court in these decisions, referring to the provision Section 4(6) and Section 14 of the Payment of Gratuity Act, 1972 and the relevant service regulations, has held that, with the provisions of Section 14 of this Act having overriding effect and the provisions of section 4(6)¹⁷ contemplating forfeiture of 15 (2020) 18 SCC 71 16 (2023) SCC Online SC 1452 17 Section 4(6) of the Payment of Gratuity Act reads as under:

(6) Notwithstanding anything contained in sub-section (1),--

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NC: 2024:KHC:30778 gratuity on dismissal of an employee, it would be open to an employer to forfeit gratuity. The relevant observations in the second decision are as follows:

The provisions of Gratuity Act make it clear that forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited.

26.2 The Corporation's Service Rules do not contemplate forfeiture of either gratuity or leave encashment

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of,

property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 6[may be wholly or partially forfeited]--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

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NC: 2024:KHC:30778 when there are disciplinary proceedings. However, the Rule 4-17 Note ii of the Service Rules read as under:

An employee who is discharged or dismissed from the services of the Corporation during the course of the year shall be paid earned leave wages for the number of days of earned leave at his credit at the time of his discharge or dismissal from the service of the Corporation as per the Section 15(4) of the Mysore Shops and Commercial Establishments Act, 1963 and Section 79(3) of the Factories Act, 1948.

It follows from the provisions referred to above that the Corporation can forfeit gratuity but insofar as earned leave, even when there is dismissal from service it must be paid subject to the aforesaid provisions. As regards salary, the provisions of the provisions of 8.3(iv) of the Service Rules read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders of the competent authorities of the Corporation or State or Central Government.

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NC: 2024:KHC:30778 The Corporation is thus vested with the power to recover salary when there is pecuniary loss.

26.3 In the case of Sri V R Somwanshi the decisions to forfeit salary /gratuity/ earned leave [Annexure

- AD and AF, which are dated 20.03.2007 and 28.05.2007], are not because of the decision resulting from the disciplinary proceedings referred to above but are consequent to other proceedings in which the petitioner has not participated. This Court is not called upon to decide the merits of such proceedings, and therefore, there cannot be any interference on this ground with these orders.

26.4 The decision to forfeit salary /gratuity/ earned leave [Annexure - N in WP No. 35645/2012 which is dated 25/27.01.2007] in the case of Sri T R Srinath is because of the decision resulting from the disciplinary proceedings referred to above. With this Court opining that the decision to dismiss him from service is in the light of vague and general charges without evidence and in denial of fair

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NC: 2024:KHC:30778 opportunity in the proceedings, this order dated 25/27.01.2007 must be quashed.

26.5 In the case of Sri R Ramesh Rao, the decision [Annexure R dated 25/27.01.2007 in WP No. 35646/2012] is because of the conclusion of the departmental proceedings resulting in his dismissal from service which cannot be sustained in view of this Court's opinion in the present proceedings, but there is no decision to forfeit either gratuity or earned leave and the decision is only to forfeit salary in a sum of 15,153/- . However, as the decision to forfeit is because of the dismissal order, this Court must interfere with this decision.

ORDER [A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure -H], the Appellate Authority - Board's order dated 21.11.2011 [Annexure - AP] and the Order dated 03.01.2012 [Annexure - AN].

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NC: 2024:KHC:30778 [B] The question of payment of consequential benefits shall be considered subject to the orders dated 20.03.2007 and 28.05.2007 [Annexure AD and AF respectively].

In WP No. 35645/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority's Order dated 25.01.2006 [Annexure -H] and the Appellate Authority -

Board's order dated 21.11.2011/ the Order dated 03.01.2012 [Annexure - Q] and the Order dated 25/27.01.2007 [Annexure - N].

[B] The consequential benefits shall be paid by the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

In WP No. 35646/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure-K] and the Appellate Authority -

Board's order dated 21.11.2011/ Order dated 03.01.2012 [Annexure - T] and Order dated 25/27.01.2007 [Annexure - R].

[B] The consequential benefits shall be paid to the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

Sd/-

(B.M.SHYAM PRASAD) JUDGE *NV Ct:vh

Smt Vijayalaxmi vs Rajashekhar Desai on 8 August, 2024

Author: Mohammad Nawaz

Bench: Mohammad Nawaz

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NC: 2024:KHC:31690
CRL.P No. 4345 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ
CRIMINAL PETITION NO. 4345 OF 2023

BETWEEN:

1. SMT VIJAYALAXMI
W/O RAJASHEKAR DESAI
AGED ABOUT 36 YEARS
PLOT NO 31, SIDDRAMA KRUPA,
SADASHIVANAGARA,
OPP P AND T QRTRS,
OLD JEVARGI,
GULBARGA-585102.

. . . PETITIONER

(BY SRI. ABHINAY Y T., ADVOCATE)

AND:

1. RAJASHEKAR DESAI
S/O NILAKANTHA DESAI
AGED ABOUT 43 YEARS,
NO.25, 6TH CROSS, P R LAYOUT,
MURUGESH PALYA,
BANGALORE-560017.

Digitally signed by LAKSHMI T Location: High Court of Karnataka
AND ALSO AT
NO 301, ASTER BLOCK,
ESTEEM GARDENIA E BLOCK
SAHAKARNAGAR,
BANGALORE-560092.

2. MEENAKSHI N DESAI
W/O NILAKANTHA DESAI,
AGED ABOUT 65 YEARS,

3. NEELAKANTHA DESAI
S/O G S DESAI,
AGED ABOUT 70 YEARS,
4. SANGAMESH DESAI
S/O NEELAKANTHA DESAI,
AGED ABOUT 34 YEARS,
NO 25, 6TH CROSS, P R LAYOUT,
MURUGESH PALYA,
BANGALORE 560017.

RESPONDENT NO.1 TO 3 ALSO AT
15, SEDAM ROAD,
NEAR HANUMAN TEMPLE,
JAYANAGAR,
GULBARGA-585105.

... RESPONDENTS

(BY SRI. RAJESHWARI M., ADVOCATE)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO
TRANSFER THE PETITION BEARING NO.CRL.MISC.NO.109/2021
PENDING BEFORE THE 1ST ADDITIONAL JUDGE,
METROPOLITAN MAGISTRATE TRAFFIC COURT, MAYO HALL AT
BENGALURU TO THE LEARNED CIVIL JUDGE AND JMFC
JEVARGI AT KALBURGI FOR ADJUDICATION AND GRANT SUCH
OTHER RELIEF.

THIS PETITION IS COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE MOHAMMAD NAWAZ

ORAL ORDER

Petitioner is seeking transfer of Crl.Misc.No.109/2021 filed by her, which is pending before the Court of NC: 2024:KHC:31690 Metropolitan Magistrate Traffic Court-I, Mayohall, Bengaluru to the Court of Civil Judge and JMFC at Kalaburagi.

2. The above case arises out of an application filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against her husband/respondent No.1 and in-laws. One of the grounds urged by the petitioner is that her minor son aged about 10 years is suffering from Autism and undergoing therapies for autism such as speech therapy, behaviour

therapy etc., and therefore, she is finding it very difficult to travel all the way from Kalaburagi to Bengaluru which is about 571 kms , to attend her case.

3. It is relevant to mention that respondent No.1 filed M.C.No.4088/2021 seeking divorce before the V Additional Principal Judge, Family Court at Bengaluru. A petition similar to the present petition was filed by this petitioner in C.P.No.56/2023 seeking transfer of the said case. This Court vide order dated 03.03.2023 was pleased NC: 2024:KHC:31690 to allow the said petition and passed an order transferring the said M.C. Petition to the Court of Principal District Judge, Family Court at Bengaluru. The said order passed in C.P. was not challenged by respondent No.1. The learned counsel appearing for the respondent submits that subsequent to transfer of the said case, the Family Court at Kalaburagi has disposed of the M.C. Petition, granting a decree of divorce in favour of respondent No.1.

4. While disposing of C.P.No.56/2023, this Court has observed that in cases of transfer petition of matrimonial proceedings, what is to be seen is the inconvenience that would be caused to the parties. In general circumstances, it should favour the wife as she would have to travel along with an attendant which would cause more inconvenience to her than the husband.

5. In the present case, it is not disputed that the minor son of the couple are living with the petitioner and he is suffering from Autism and undergoing therapies such as Speech therapy, behaviour therapy etc. In that view of NC: 2024:KHC:31690 the matter, sufficient grounds are made to allow the petition and to grant the prayer as sought for. Hence, the following:

ORDER Petition is Allowed.

Crl.Misc No.109/2021 pending before the Metropolitan Magistrate Traffic Court-I, Mayohall at Bengaluru is transferred to the Court of Civil Judge and JMFC at Kalaburagi.

The parties are directed to appear before the Court in Kalaburagi, without further notice, on 28.09.2024.

The personal appearance of respondent Nos.2 to 4 shall be dispensed with unless the need arises.

Sd/-

(MOHAMMAD NAWAZ) JUDGE HB

Vijayalaximi W/O Neelkanth vs Neelkanth S/O Devrao Gokhale on 7 August, 2024

Author: K Natarajan

Bench: K Natarajan

-1-

NC: 2024:KHC-K:5793
CRL.RP No. 200070 of 2022
C/W CRL.RP No. 200093 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL REVISION PETITION NO.200070 OF 2022
(397)
C/W
CRIMINAL REVISION PETITION NO.200093 OF 2023

IN CRL.RP NO.200070 OF 2022
BETWEEN:

VIJAYALAXIMI W/O NEELKANTH
AGE: 37 YEARS,
OCC: HOUSEHOLD,
R/O T. MARZAPUR,
TQ. AND DIST. BIDAR-585401.

...PETITIONER

Digitally signed by

KHAJAAMEEN L (BY SRI. MAHADEV S. PATIL, ADVOCATE)

MALAGHAN

Location: High AND:
Court Of
Karnataka

NEELKANTH S/O DEVRAO GOKHALE,
AGED 48 YEARS,
OCC: POLICE CONSTABLE WORKING IN
KSRP 6TH STATION P.C NO. 426
KALABURAGI IN SULTANPUR,

CAMP KARNATAKA
R/O AURAD-B DIST BIDAR-585401.

... RESPONDENT

(BY SRI. RAVI BHEEMSINGH CHAWAN, ADVOCATE)

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NC: 2024:KHC-K:5793

CRL.RP No. 200070 of 2022
C/W CRL.RP No. 200093 of 2023

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 OF CR.P.C., PRAYING TO SET-ASIDE THE ORDER OF DATED 01.04.2022 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT BIDAR IN CRIMINAL APPEAL NO. 96/2019 WERE IN CONFIRMED THE ORDER DATED 06.11.2019 PASSED IN CRL. MISC.NO. 2202/2015 BY THE LEARNED I ADDL. CIVIL JUDGE AND J.M.F.C. -II COURT AT BIDAR BY ENHANCING THE MAINTENANCE AWARD IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL. RP NO. 200093 OF 2023 (397)

BETWEEN:

NEELKANTH
S/O DEVRAO GOKHALE,
AGE: 50 YEARS, OCC: POLICE CONSTABLE,
WORKING IN KSRP 6TH STATION,
PC. NO. 426 KALABURAGI IN
SULTANPUR CAMP KARNATAKA
R/O SANGAM VILLAGE,
TQ. AURAD-B DIST. BIDAR
KARNATAKA STATE-58531

... PETITIONER

(BY SRI. RAVI BHEEMSINGH CHAWAN, ADVOCATE)

AND:

VIJAYLAXMI
W/O NEELKANTH,
AGE: 40 YEARS, OCC: HOUSE HOLD,
R/O TQ MARZAPUR
TQ. AND DIST. BIDAR-585226.

... RESPONDENT

(BY SRI. MAHADEV S. PATIL, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C., PRAYING TO CALL FOR RECORDS AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF MAINTENANCE PASSED ON 06.11.2019 IN CRL.MISC.PETITION

NO. 2202/2015 OF THE ADDL. CIVIL JUDGE AND JMFC AT

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NC: 2024:KHC-K:5793

CRL.RP No. 200070 of 2022
C/W CRL.RP No. 200093 of 2023

BIDAR WHEREBY APPELLATE COURT CONFIRMED IN CRIMINAL
APPEAL NO. 21/2020 OF ADDL. DIST. AND SESSION JUDGE
BIDAR JUDGMENT AND ORDER DATED 10.07.2023.

THESE PETITIONS, COMING ON FOR ADMISSION THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) Crl.RP.No.200070/2022 is filed by the petitioner/wife for enhancement of maintenance awarded by the learned I Addl. Civil Judge and JMFC-II, Bidar in Crl.Misc.No.2202/2015, which was upheld by the Prl. District and Sessions Judge, Bidar in Crl.Misc.No.96/2019.

2. Whereas Crl.RP.No.200093/2023 is filed by the petitioner/husband for reducing the maintenance amount awarded by the same Courts.
3. Heard learned counsel for the petitioner and learned counsel for the respondent.
4. The parties are referred to as their ranking in Crl.RP.No.200070/2022 for clarity.

NC: 2024:KHC-K:5793

5. The case of the petitioner is that she married the respondent on 04.05.2003 as per Hindu customs and out of wedlock two children were born namely Satyawan @ Sangmesh aged about 11 years and Nagesh aged 7 years in 2015. Previously the respondent was married to the sister of the petitioner and she died by committing suicide. A criminal case was registered against the respondent under Sections 498-A and 306 of IPC r/w Sec.3 and 4 of D.P. Act, which was settled between the parties and the petitioner got married to the respondent.

6. The respondent being a KSRP Police constable neglected the maintenance of the petitioner. Hence, the petitioner had filed a petition under Section 12(3) of Protection of Women from Domestic Violence Act, 2005. Respondent appeared in the matter through his counsel and filed a statement of objections and contested the matter. Finally, the Magistrate allowed the application in part by awarding Rs.5,000/- to the first petitioner and Rs.2,000/- each to the children as monthly maintenance, till they attain majority. Being aggrieved by the same, NC: 2024:KHC-K:5793 both the

petitioner and respondent had filed an appeal before the Sessions Judge, where the learned Sessions Judge had dismissed those appeals and confirmed the order passed by the Magistrate. Hence, they are before this Court.

7. Learned counsel for the petitioner contended that the petitioner had sought for Rs.10,000/- per month. But, the Trial Court only awarded Rs.5,000/- only. The children are studying in school and Rs.2,000/- per month is too meager sum and it is not possible to maintain the children in the said award. The respondent is working as a constable and earning Rs.58,000/- per month. Therefore, he seeks for enhancement of the award.

8. Per contra, learned counsel for the respondent also filed a petition for challenging the maintenance contending that the first son has already attained the age of majority and the second son will also attain majority in the near future. The petitioner has not produced the birth certificate nor any documents to prove their age or that they are studying. He was earning only Rs.40,000/- per NC: 2024:KHC-K:5793 month at the time of filing of petition. Therefore, the amount of compensation passed by the Magistrate and confirmed by the Trial Court is correct and there is no need for enhancement. In fact, it has to be reduced. Hence, he prays to dismiss the petition filed by the petitioner herein.

9. After hearing the arguments and perusing the records, the point that would arise for consideration is:

"i) Whether the Magistrate is justified in awarding Rs.5,000/- to the petitioner and Rs.2,000/- each to both the children?"

10. A perusal of the records would go to show that the relationship between the petitioner and respondent is not in dispute. Previously the respondent was married to the elder sister of the petitioner and she died by committing suicide. Hence, a criminal case was registered against the respondent and it was settled in compromise and the petitioner got married to the respondent. Out of their wedlock two children were born namely Satyawan and Nagesh, aged 11 years and 7 years respectively at the NC: 2024:KHC-K:5793 time of filing the petition. It is also admitted fact that the respondent is working as a police constable in KSRP and his salary was almost Rs.40,000 to Rs.50,000 at the time of filing of the petition. Now, his salary is increased to Rs.58,724, out of which Rs.15,383 is deducted towards the attachment made by the learned Magistrate for recovery of the arrears of maintenance and only Rs.255 is deducted towards benevolent fund, Arogya Bagya Scheme, etc., He is receiving DA, HRA, CCA and other allowances and his salary is Rs.58,724/. Even the same was taken into consideration at the time of disposing the matter in 2019. Hence, the salary would be definitely more than Rs.50,000/- per month.

11. Such being the case, when it is admitted that the two children are born out of the wedlock of the petitioner and respondent, awarding Rs.5,000/- to the petitioner is little meager to meet her expenses like medical, clothing, food and accommodation. Apart from that, Rs.2,000/- each per children is also too little to meet the educational expenses of the children. The petitioner NC: 2024:KHC-K:5793 counsel has not produced any documents to prove the actual age of the children.

Even otherwise, the order of maintenance in respect of the children is only till they attain majority. Hence, there is no need to interfere with the order awarding Rs.2,000/- each by the Trial Court.

12. However, by looking at the fact that the respondent is earning more than Rs.50,000 per month, out of which Rs.15,000/- is deducted towards arrears of maintenance, still he is getting more than Rs.45,000/- per month. Therefore, the maintenance awarded to the petitioner is very little and the same needs enhancement.

13. The petition is pending for almost more than 9 years. Arrears of maintenance is Rs.5,40,000/- to the first petitioner and Rs.4,80,000/- to the children, out of which more than Rs.5,00,000/- has been paid by the respondent and out of remaining amount Rs.2,00,000/- has been paid before this Court and he is paying arrears from his salary attachment. If, Rs.2,000/- per month is enhanced from the date of the petition for the first petitioner, it will meet the ends of justice. Accordingly, following order:

NC: 2024:KHC-K:5793 ORDER i. The Criminal Revision Petition No.200070/2022 is allowed in part. ii. Maintenance of Rs.5,000/- is enhanced to Rs.7,000/- per month to the petitioner from the date of the petition and Rs.2,000/- per month to each children is confirmed.

iii. Criminal Revision Petition
No. 200093/2023, filed by the

respondent/husband is hereby dismissed.

Sd/-

(K NATARAJAN) JUDGE NJ Ct:SI

Abhay Kumar vs The State Of Karnataka on 19 July, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

1

Reserved on : 05.07.2024

Pronounced on : 19.07.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4687 OF 2024

BETWEEN:

ABHAY KUMAR
S/O JAGAT BHUPENDRA PRASAD
AGED ABOUT 43 YEARS
RESIDING AT C/O SANDIP SHANKAR
MAHABIR TOLA
OPP. POULTRY FARM
ARRAH, BIHAR - 802 301.

... PETITIONER

(BY SMT. AMRITA MANCHAND, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY SHO/POLICE INSPECTOR
SADASHIVANAGAR POLICE STATION
BENGALURU - 560 080.
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU - 560 001.

2. MRS. RASHMI RANJAN
W/O ABHAY KUMAR
D/O RAJ KISHORE PRASAD

2

AGED ABOUT 41 YEARS
RESIDING AT AADARSH COLONY
KOERI TOLA, P.O.BETTIAH
BIHAR - 845 438.

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R-1;
SRI V.CHANDRAMOULI, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.24483/2018 REGISTERED BY SADASHIVANAGAR POLICE STATION, BENGALURU (1ST RESPONDENT) FOR THE OFFENCES P/U/S 498(A), 420 R/W 34 OF IPC AND SEC. 3 AND 4 OF DOWRY PROHIBITION ACT, NOW PENDING BEFORE THE XXXIX ADDL.C.M.M., BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this court calling in question proceedings in C.C.No.24483 of 2018 arising out of crime in Crime No.112 of 2018 registered for offences punishable under Sections 498A, 420 read with 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('the Act' for short).

2. The facts, in brief, germane are as follows:

The 2nd respondent is the complainant, wife of the petitioner.

The two get married on 21-04-2014. Soon thereafter, the allegation or averment in the petition is that, the complainant started to quarrel with the petitioner/husband and therefore, the relationship began to flounder. After floundering of the relationship, the wife institutes several proceedings - one invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005, the other is petition for restitution of conjugal rights in M.C.No.2536 of 2015 and the third one is the impugned proceedings for it being registered on 30-05-2018 for the afore-quoted offences. Thereafter, the husband institutes proceedings before the concerned Court seeking dissolution of marriage.

3. The Police, in the subject crime, conduct investigation and file a charge sheet in C.C.No.24483 of 2018 for the aforesaid offences. The learned Magistrate takes cognizance of the offences and the

matter is pending before the concerned Court. Long thereafter the Family Court at Bangalore allows divorce petition of the petitioner and rejects the petition for conjugal rights of the wife by making certain observations. It is then the subject petition is preferred contending that all the allegations made by the wife are false by seeking quashment of entire proceedings.

4. Heard Smt. Amrita Manchand, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Sri V. Chandramouli, learned counsel appearing for respondent No.2.

5. The learned counsel for the petitioner would vehemently contend that the allegation against the petitioner is on the face of it false. There is no demand of dowry made at any point in time by the petitioner. It is the torture that is meted out by the wife against the husband that led the concerned Court granting divorce and rejecting restitution of conjugal rights petition. Those orders have become final. It is to be noticed that at the stage of registration of the crime all the members of the family had been drawn into the web of crime. There were 9 accused. The police conduct investigation and drop all others except the husband from the array of accused. Even the husband has not indulged in any act that would become any of the ingredients of offences. She would seek quashment of entire proceedings, terming them to be an abuse of the process of law.

6. Per contra, the learned counsel appearing for the 2nd respondent/complainant would vehemently refute the submissions to contend that the police after investigation have filed the charge sheet. Once having filed the charge sheet, it is for the petitioner to come out clean in the trial. The Police while filing the charge sheet have dropped all other accused except the petitioner. Therefore, it cannot be said that there is abuse of the process of law. All allegations against the husband are clearly met in the case at hand.

He would submit that merely because the concerned Court has rejected the petition for conjugal rights and granted divorce, the same would mean that the subject crime registered long ago would vanish. He would seek dismissal of the petition.

7. The learned High Court Government Pleader would toe the lines of the learned counsel representing the complainant/ 2nd respondent in contending that it is a matter of trial for the petitioner to come out clean and would submit that the proceedings before the concerned Court are at advanced stage and, therefore, this Court should not interfere.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are all a matter of record. The link in the chain of events is borne out from the pleadings. The relationship between the two i.e., the petitioner and the 2nd respondent has turned sore. The soreness leads to four proceedings

- three registered by the wife against the husband and one registered by the husband against the wife. The ones that are registered by the wife are invoking the provisions of the Protection of

Women from Domestic Violence Act, 2005; seeking restitution of conjugal rights and the subject crime. The analogous proceedings that have taken place have a bearing on the consideration of the issue in the lis. At the outset, I deem it appropriate to notice the complaint that has triggered registration of the crime. It reads as follows:

".....

On 30th April, my mother-in-law and my husband took me to a temple and then to a dargah, which was around 50 KMs outside Bangalore in Ramnagar district Tungni village. I came to know that my husband used to visit that place before marriage also regularly and Maulana was known to him. I was shocked that was not discussed during our courtship period. Maulana started telling me that no one in the family is happy with this marriage and until you bring 50 lakh amount, the marriage will not be complete and your husband will not maintain any physical relationships with you. Maulana started threatening me that he can perform black magic on me and my family and will never allow the relationship to progress.

When I asked my husband regarding this he threatened me saying that this Maulana he is very powerfull black magician and has a capacity to ruin or kill people and I should listen to him and get the money has told by his family and the Maulana who he respect a lot.

After That I was force to entire household work, including cooking, sweeping, mopping, toilet cleaning, cloth washing etc, my days used to start at 4 AM and finish at 11:30 PM. My mother-in-law used to abuse my family members and scold me regularly and teasing me about my height and my looks and continuously asking me to bring money from my parents. I was not given food till 12. She used to send me down for dry cleaning her clothes and for stitching her clothes and used to call my husband and said that I am outside house for my own work. she was playing a double game. Both of them continuously used to visit Mrs. Mala Sinha house and lock both bedrooms in house and keep me in the hall alone. Whenever I fell ill, there was no consultation to doctor by them for me saying ask money from parents and then only we will take you to doctor. They also started blaming me that as per Maulana. there is some ghost staying with me and as per Maulana I was blamed to get all information about my husband through that ghost, and the Maulana used to come home and do some ritual and ask me to bring money if not my entire family will suffer in turn they blamed me for doing black magic and creating trouble to them. My Mother-in-law use to curse me saying that she will ensure I will not get the child the Maulana ask my husband not to have any physical contact with me. He started abusing my parents regularly and started asking me to leave the house. He started hating my face. His Elder brother-in-law Mr.Prem Shanker came to Bangalore along with his daughter Anjali Shanker for CET examination and even he started scolding me asking my family is not giving those 50 lakhs to them immediately. ----Mrs.Mala house in one evening and there also, everyone was asking about money. Brother-in-law left the

house same night. His ticket was confirm, my life had become a hell.

All of a sudden, my husband said that he has to go to Chennai due to his job and he said he will call me after getting settled there and asked me to go to my house for pag-phera (a ceremony where girl visits her house after marriage for the first time). He dropped me to my parent's house on 09th June and left from there. Some days later he said over phone that he has to go to Mysore now and will need some more time to call me over. I called over my elder sister-in-law and all refused to help me and said you alone can resolve the matter by bringing quick money from your parents.

In September first week, my father and brother went to Bell road house and found that my husband has left the house and another renter was staying over there from 01st August itself. My brother met Mr.Swaraj Sinha and he first assured of help but later started threatening of his power and reach to big people in administration. We are simple people so we got scared. I asked my husband over phone to give me his new address so that I can come over, but he never provided me new address. He started asking me to search him and was very angry to know that my father and brother went to search him in the house address. My father spoke to my elder brother-in-law PremShankar and asked whether to send me to Arrah house, and then my elder brother-in-law asked him to not send me to Arrah and send to Abhay by finding him. He also threatened of my life if we do not arrange for 50 lakh at the earliest. Slowly all stopped receiving my calls and there was no help available from anywhere.

My husband used to call my parents sometimes and talk bad things about me. Every now and then he used to convince me that he will come very soon and me. In February 2015, sent a mail to my brother asking him to take whatever step we could, but he refused to take me back to his house. Abhay told no one wants to take me. Back. My father, brother spoke to him several times but he was very much adamant about not calling me back to his house and started giving legal threats. We tried our best to meet him and talk to him in person, but there was no way. After that I went and met the Maulana, who told me that if you arrange the money then he will direct the husband to live with me has no one was helping I filed DV case and Conjugal rights only to ensure that my husband comes and live with me. Several medication took place and my husband promised to take me back if the conditions are met. trusted my husband and words I waited believing that he will come and take me back from my parents home. Recently I came to know that my husband is having a affair with a colleague and as per the direction of Maulana he is to trying to et married to her. The entire family of my husband has colluded with the Maulana and cheated and threatened me and also spoiled my life.

I request your good self to register a case and investigate and also provide protection to me and my aged parents."

Minor skirmishes between the husband and the family members are undoubtedly blown out of proportion in the complaint. Though the complaint is verbose, it does not point at any ingredients of any offence that is alleged. All day-to-day occurrences and registration of proceedings are narrated

after the institution of third proceedings, in the impugned crime, in Crime No.112 of 2018. By then, the husband had already instituted proceedings for annulment of marriage. The Police conduct investigation and file a charge sheet. Column No.7 of the charge sheet reads as follows:

"F zÉÆÃµÁgÉÆÄYÀuÁ ¥ÀnÖ CAPÀt 4 gÀ°è £ÀªÀÄÆ¢¹gÀÄªÀ DgÉÆÃ|UÀÆªÀÄvÀÄÛ ,ÁQë- 1 gÀªÀjUÉ ¢£ÁAPÀ:21/04/2024 gÀAzÀÄ ©ºÁgÀzÀ ¥ÀmÁß zÀ°è UÀÄgÀÄ »jAiÀÄgÀ ,ÀªÀÄÄäRzÀ°èªÀÄzÀÄªÉAiÀiÁVzÀÄYªÀÄzÀÄªÉAiÀÄ ,ÀªÀÄAiÀÄzÀ°è 5 ®PÀe gÀÆ, 100 UÁæA a£ÀßzÀªÀqÀªÉ, 100 UÁæA "É½iAiÀÄªÀqÀªÉUÀ¼À£ÀÄßªÀgÀzÀQëuÉAiÀiÁV «dÈA" sÀuÉ¬ÄAzÀªÀÄzÀÄªÉªÀÄrPÉEnÖzÀÄY£ÀªÄvÀgÀ ,ÁQë-1 gÀªÀgÀ£ÀÄß ¢£ÁAPÀ:29/04/2014 gÀAzÀÄ DgÉÆÃ|vÀ£ÀÄ EzÉÃ "ÉAUÀ¼ÀÆgÀÄ £ÀUÀgÀ ,ÀzÀ²ªÀ£ÀUÀgÀ ¥ÉÆºÃ,i oÁuÁ ,ÀgÀºÀzÁYzÀ £ÀA.444. 2£ÉÃªÀÄºÀr, 2£ÉÃ PÀæ, i, ,ÀgÉÆÃd «®AiÀÄ, aPÀlªÀiÁgÀ£ÀºÀ½i, £ÀÆå © E J¬i gÀ ,ÉÛ, "ÉAUÀ¼ÀÆgÀÄ Eºè£À "ÁrUÉªÀÄ£ÉUÉ PÀgÉvÀAzÀÄ ¥ÀævÉåÄPÀªÁVªÀ Á«zÁYUÀ ,ÁQë-1 gÀªÀgÀÄ "ÉAUÀ¼ÀÆj£À dUÀ¢Ã±i £ÀUÀgÀzÀ vÀ£Àß CtÚ£ÀªÀÄ£ÉUÉºÉÆAV ,Àé®à ¢£ÀUÀ¼À£ÀAvÀgÀªÁYÀ ,i §AzÀÄ C£ÁgÉÆÃUÀå |ÁrvÀgÁzÁUÀ DgÉÆÃ|vÀ£ÀÄ ,ÁQë-1 gÀªÀjUÉ «£ÀßªÉÄÆAiÀÄºè zÉªÀé EgÀÄªÀzÀVºÉzÀj¹ 50 ®PÀe gÀÆUÀ¼À£ÀÄß vÀAzÀÄ PÉÆqÀÄ E®èªÀzÀgÉ «£ÉÆßA¢UÉ ,ÀA ,ÁgÀªÀiÁqÀÄªÀÄ¢®è "ÉÃgÉÆsÀ¼À£ÀÄßªÀÄzÀÄªÉªÀiÁrPÉÆ¼ÀÄ½vÉÛÃ£ÉAzÀÄ "ÉzÀjPÉºÁQºÉaÑ£ÀªÀgÀzÀQëuÉºÀtPÀlV ,ÁQë-1 gÀªÀgÀ£ÀÄßªÉÆÃ ,À¢AzÀºÉaÑ£ÀºÀtªÀ£ÀÄß ¥ÀqÉAiÀÄªÀGzÉYÀ±À¢AzÀªÀÄ£É ©lAOºÉÆÃUÀÄªÀAvÉ "ÉzÀjPÉºÁQgÀÄªÀzÀÄ. vÀ¤SÁ PÀ®zÀºè zÀÈqÀYÀnÖgÀÄªÀzÀjAzÀ DgÉÆÃ|vÀ£ÀªÉÄÄºÉ "sÁgÀwÃAiÀÄ zÀAqÀ ,ÀA»vÉ PÀ®A 498(J), 420 L¹, eÉÆvÉUÉ PÀ®A 3ªÀÄvÀÄÛ 4 r | DPiÖ jÃvÁå zÀAr ,À®àqÀÄªÀCYÀgÁzsÀªÉ ,ÀVgÀÄªÀzÀÄ vÀ¤SÁ PÀ®zÀºè ,ÀAUÀæ»¹zÀ ,ÁPÁëzsÁgÀUÀ¼ÀzÀ zÀÈqÀYÀnÖgÀÄvÀÛzÉ.

DzÀÝjAzÀ DgÉÆÃ|vÀ£À «gÀÄzÀÄªÉÄÃ®IAqÀ PÀ®A£ÀAvÉ zÉÆÃµÁgÉÆÄYÀuÁ ¥ÀnÖ."

A perusal at the complaint or the summary of the charge sheet would at the outset indicate that every member of the family had been maliciously drawn into the web of crime. The Police rightly dropped all other accused and held the reins on the petitioner/ husband. Whether the offences alleged against the husband also meet any of the ingredients is what is required to be noticed. It is here analogous proceedings become necessary to be noticed.

10. As observed hereinabove, the wife had preferred a petition for restitution of conjugal rights. The husband had preferred petition seeking annulment of marriage. The two are taken up together by the concerned Court in M.C.No.4065 of 2018 which was for annulment of marriage and M.C.No.2536 of 2015 which was for restitution of conjugal rights. Certain paragraphs of the order would clinch the issue. They read as follows:

"....

28. The respondent during the cross-examination of the petitioner contended that though she is not interested to return to her matrimonial home. She filed false complaint against him and his family members petitioner subjected them for cruelty, Though, the PW-1 was subjected for cross-examination in length in support of the allegation made by the respondent / husband in his petition filed for dissolution of marriage in MC No.4065/2018, nothing has been elicited in her cross- examination in support of her case.

29. Admittedly, the marriage of the petitioner and respondent was solemnized on 21-4-2014 and both of them came to Bengaluru and started residing together on 29-4-2014. Admittedly, on 9-6-2014, the petitioner / wife returned to her parents house for pagphera ceremony it means both petitioner and respondent lived together in their marital home for a short time i.e., from 29-4-2014 to 9-6-2014. The petitioner denied the suggestion that she was not attending to the household chores. The respondent / husband in his affidavit evidence clearly pleaded that though he suggested the petitioner to have a maid servant, she refused to hire any maid servant. It shows that there was no maid servant in the matrimonial home of the petitioner. Admittedly, respondent was employed and he has busy schedule.

30. The petitioner / wife in her cross- examination clearly stated that the respondent sent her to her parents house and denied the suggestion that she continued to stay in her parents house on one or the other pretext as she was not willing to return to her marital home. The petitioner contended that in spite of their several requests, the respondent failed to give his address for her to return to her matrimonial home. In this regard, Ex. P5 supports the case of the petitioner as said in previous paragraphs.

.....

37. Though the PW-1 has contended that he was demanded for dowry, as discussed in previous paragraphs she filed the said complaint subsequently after her husband filed the petition for dissolution of their marriage. Even in the entire e- mail produced before the court both by the petitioner as well as respondent there is no reference regarding the demand placed for dowry. Though, the PW-1 in her statement of objections stated that her husband / respondent filed the petition for dissolution of her marriage, claiming that their marriage has not been consummated, PW-1 in her cross- examination clearly admitted that their marriage has not been consummated. The facts elicited during the cross- examination of the PW-1 prevails over the pleadings. Admittedly, both petitioner and respondent are residing separately from 2014. IN the decision reported in 2007 (4) SCC 511 in Samarghosh vs. Jaya Ghosh case, held that unilateral decision and refusal to have physical relationship for considerable period without any sufficient cause or valid reasons amounts to mental cruelty. Ex. R4 e-mail chats refers to the fact that the PW-1 has no respect towards the family members of her husband and she blamed the entire family members of her husband, for which, the brother of the PW-1 accepted the disrespectful attitude of his sister towards his mother-in-law and family members of her husband and he apologized for the same. The contents of Ex. R4 also reflects that the petitioner / PW-1 took all her valuables and most of the clothes with her, while going to her parents house on 9-6- 2014. If she had an intention to return to her marital home after pagphera ceremony she had no reason to carry all her belongings to her parents house from

her matrimonial home. The e-mail correspondence held in September 2014 between the brother of the petitioner and respondent as well as e-mail correspondence between the petitioner and respondent reflects the cause for matrimonial dispute between the parties and it shows that the brother of the petitioner has not denied any of the allegations made by the RW-1 against his wife. Ex. R4 reflects that the RW-1 has replied to the e-mail received from the petitioner in September 2014 stating that since she is not having interest to have physical relationship with him, the place where she is going to stay will not make any difference. Till date, the petitioner / PW-1 even after knowing the specific contention taken up by her husband and the e-mail placed before the court which reflects the cause for their matrimonial dispute, she has not assigned any reasons for having not consented for the consummation of their marriage. Even though the RW-1 has not tendered himself for cross-examination the entire evidence placed before the court clearly leads to the conclusion that no purpose will serve in allowing the petition filed by the PW-1 for restitution of conjugal rights and it is settled position of law that no person can be compelled to have co-habitation.

38. The RW-1 by placing the e-mail correspondence held between them and also by cross-examining the PW-1 made it clear that the petitioner is not entitled for the relief of restitution of conjugal rights as she failed to restore conjugal rights in favor of her husband while she was residing with him after their marriage. The petitioner has not assigned any reason for having failed to restore conjugal rights in favor of her husband and for preventing the respondent from consummating their marriage. When she failed to assign any reasons, I find no reason to disbelieve the case of the respondent / husband that the purpose of their marriage got defeated at the instance of the petitioner. Hence, no purpose will serve in directing them to stay together through the decree of Restitution of conjugal rights after the lapse of more than 9 years of their separation. Thereby the respondent assigned reasons for having failed to take his wife / PW-1 back to her matrimonial home. Hence, I proceed to hold that the petitioner / PW-1 has failed to made out the grounds for restitution of conjugal rights. The evidence placed before the court by the parties to the proceedings clearly leads to the inference that the respondent / RW-1 suffered cruelty in his marital life due to the failure of PW-1 to restore conjugal rights. Both parties are residing separately from 9-6-2014 i.e., for more than nine years. Since the PW-1 has failed to made out the ground for restitution of conjugal rights, though the RW-1 has failed to tender himself for cross-examination, the facts admitted by the parties to the proceedings leads to the conclusion that he suffered cruelty in his marital life due to the refusal of the PW-1 for the consummation of their marriage and by showing disrespectful attitude towards the family members of the RW-1 which amounts to cruelty. Merely for the reason that the RW-1 has failed to make payment towards the maintenance of his wife, if the petition is dismissed, it will just protract the proceedings and leads to the multiplicity of the proceedings. The records placed before the court shows that as on the date of filing the petition in MC No.2536/2015 PW-1 was aged 36 years and RW-1 was aged about 40 years. The present age of the parties also needs to be taken into consideration, for just and proper adjudication of the matter and to avoid multiplicity of proceedings. Till date, PW-1 has not taken any steps for recovery of maintenance amount. Hence, she is at liberty to recover the maintenance amount as per the orders on IA No.5 dated 6-1-2022. Hence, I proceed to answer point No.1 in negative and point No.2 in the affirmative."

(Emphasis added) The concerned Family Court grants divorce - annulment of marriage and rejects the plea of the wife for conjugal rights. What is discernible from the aforesaid paragraphs of the order passed by the concerned Court is that, nothing has come out in the cross-

examination of the complainant that there was at any point in time cruelty meted out by the husband against her. Therefore, the issue of cruelty has tumbled down. The Court again records that though the complainant has contended that the husband had demanded dowry, in the entire correspondence between the husband and the wife, there was no reference at any point in time about demand of dowry. The Court again goes on to record that the complainant has failed to make out any ground for restitution of conjugal rights. The facts admitted by the parties would lead to a conclusion that the husband has suffered cruelty in his matrimonial life due to refusal of the wife even for consummation of marriage. All that was projected before the concerned Court is non-payment of maintenance by the husband. For all the aforesaid reasons, the Court would pass the following order:

".....

39. Point No.3:- In view of the above said findings, I proceed to pass the following :-

ORDER The petition filed by the petitioner in MC No.2536/2015 u/sec. 9 of Hindu Marriage Act, is hereby dismissed.

The petition filed by the petitioner in MC No.4065/2018 u/sec. 13 (1) (ia) of Hindu Marriage Act, is hereby allowed.

The marriage of the petitioner solemnized with the respondent on 21-04-2014 at Sri Radhe Krishna Community Hall, Shivapuri, Ganga Market, Behind AN College, Patna, Bihar - 800 023, is hereby dissolved through the decree of divorce.

Considering the relationship between the parties, no order as to costs.

Draw decree accordingly.

Ordered to return the original documents to the concerned, as per the rules.

Original judgment copy kept in MC No.2536/2015 and copy kept in MC No.4065/2018."

This is said to have become final by the parties. If the complaint, summary of the charge sheet, findings by the concerned Court in the aforesaid matrimonial cases are read in tandem, what would unmistakably emerge is, minor skirmishes between the husband and the wife without there being any spec of evidence or demand of dowry by the husband or cruelty by the husband for demand of dowry are blown out of proportion with ulterior motive. There being nothing that would pin the petitioner

down with the ingredients of the offences, permitting any further proceedings would become an abuse of the process of law.

11. Section 498A of the IPC has two parts. One, cruelty to the extent that the women would be forced to commit suicide and the other is cruelty on a demand for dowry which is unfulfilled by the wife. Both these circumstances are conspicuously absent in the case at hand. The other offence is Section 420 of the IPC. Where from Section 420 of the IPC would spring is a mystery, as the petitioner has never, with dishonest intention, married the complainant. It was a marriage and the marriage has gone wrong. Marriage going wrong cannot be termed to be cheating on the part of the husband.

Both of them are equally responsible for tumbling down of the marriage in the case at hand.

12. In the circumstances, it would become apposite to refer to the judgment of the Apex Court in the case of ACHIN GUPTA v.

STATE OF HARYANA¹, wherein it is held as follows:

"ANALYSIS

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the criminal proceedings should be quashed?

16. The Appellant and the Respondent No. 2 got married in October 2008. The couple lived together for more than a decade and in the wedlock a child was born in March 2012.

17. We take notice of the fact that the Appellant filed a divorce petition in July 2019 on the ground of cruelty. The divorce petition was withdrawn as the Appellant was finding it difficult to take care of his child, while travelling all the way to Hisar on the dates fixed by the Court. The Appellant's mother had to file a domestic violence case against the First Informant in October 2020 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

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18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent

No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr. P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

22. Once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet. There is nothing in the words of Section 482 of the Cr. P.C. which restricts the exercise of the power of

the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet.

23. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings:--

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

24. This Court, in the case of State of A.P. v. Vangaveeti Nagaiah, (2009) 12 SCC 466 : AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:--

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are 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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontested allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-

cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie*, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in Kaslefsky v. Kaslefsky, [1950] 2 All ER 398 observed as under:--

"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an

intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-

be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in American Jurisprudence 2nd edition Vol. 24 page 206. It reads thus:--

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."

(Emphasis supplied)

35. In one of the recent pronouncements of this Court in *Mahmood Ali v. State of U.P.*, 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr. P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in Preeti Gupta (*supra*) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

"34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

38. In the aforesaid context, we looked into Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in Preeti Gupta (*supra*). Sections 85 and 86 respectively are reproduced herein below:

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

85. 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.

Cruelty defined.

86. For the purposes of section 85, "cruelty" means--

- (a) any wilful 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."

39. The aforesaid is nothing but verbatim reproduction of Section 498A of the IPC. The only difference is that the Explanation to Section 498A of the IPC, is now by way of a separate provision, i.e., Section 86 of the Bhartiya Nyaya Sanhita, 2023.

40. We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force.

41. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside."

(Emphasis supplied) The Apex Court considers the entire spectrum of law where provisions of Section 498A have been grossly misused, time and again by drawing proceedings against the members of the family or the husband without any rhyme or reason. The findings of the Apex Court would become applicable to the facts of the case at hand on all its fours and permitting trial against this petitioner, the husband, would become an abuse of the process of law, resulting in miscarriage of justice. Therefore, I deem it appropriate to exercise my jurisdiction under Section 482 of the Cr.P.C., and take off the sword of trial hanging upon the petitioner, failing which it would become an abuse of the process of law and result in miscarriage of justice.

13. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) The proceedings in C.C.No.24483 of 2018 pending before the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru stand quashed.

Consequently, I.A.No.1 of 2024 stands disposed.

Sd/-

JUDGE bkp CT:MJ

Balasaheb Patil vs Smt. Soni @ Sonia Patil on 12 July, 2024

1

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF July 12, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.5479 OF 2020

C/W

CRIMINAL PETITION NO.4818 OF 2020

WRIT PETITION NO.7470 OF 2021 (GM-RES)

WRIT PETITION NO.7539 OF 2021 (GM-RES)

IN CRL.P NO. 5479/2020

BETWEEN:

1. BALASAHEB PATIL
S/O. LATE. BABAGOURA PATIL
AGED ABOUT 72 YEARS
RETD. DEPUTY SUPERINTENDENT OF POLICE
2. SMT. CHANNAMMA PATIL
W/O. BALASHEB PATIL
AGED ABOUT 63 YEARS

BOTH ARE R/AT NO.004, GROUND FLOOR
PYRAMID TEMPLE BELL APARTMENT
KENCHENAHALLI, RAJARAJESWARINAGAR
BANGALORE-560 098.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

2

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS

3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

(RESPONDENT 2 AND 3 ARE MINORS
REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN).

4. ANIL KUMAR
S/O BALASAHEB PATIL
AGED ABOUT 43 YEARS
ALL ARE R/AT NO.73, KPA BLOCK
I MAIN, CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED UNDER U/S.482
CR.P.C, PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 PENDING ON THE FILE OF
M.M.T.C.-IV, BENGALURU AND ALLOW THIS CRL.P.

3

IN CRL.P.NO.4818/2020
BETWEEN:

1. BASANAGOUDA
S/O. LATE. BABAGOUDA PATIL
AGED ABOUT 60 YEARS
OCC. ENGINEER
R/AT NO. 115, 2ND MAIN
AMRUTHNAGAR, HEBBAL
BANGALORE-560 092.

2. SMT. ASHWINI
W/O. SATISH RACHANNA
AGED ABOUT 40 YEARS
R/AT FLAT NO. L-806
BRIGADE METROPOLIS
GARUDACHARAPALYA
MAHADEV PURA
BANGALORE-560 048.

3. SMT. SHANTALA
W/O. JAISHEEL DHANDARGI
AGED ABOUT 37 YEARS

PRESENTLY R/AT PYRAMID TEMPLE BELLS
GROUND FLOOR,B BLOCK
IDEAL HOMES LAYOUT
RR NAGAR, BANGALORE-560040.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

4

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS
3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

RESPONDENTS 2 & 3 ARE MINORS REPRESENTED BY
THEIR MOTHER AND NATURAL GUARDIAN
RESPONDENT NO. 1

ALL ARE R/AT NO.73, KPA BLOCK,
I MAIN , CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED U/S.482 CR.P.C,
PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 ON THE FILE OF IV M.M.T.C.,
BENGALURU AND ALLOW THIS CRIMINAL PETITION.

5

IN W.P.NO.7470/2021

BETWEEN:

SRI ANIL KUMAR
S/O SRI.BALASAHEB BABAGOUDA PATIL
AGED 42 YEARS
R/AT HOUSE NO.73

KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONER

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.
2. SRI. BALASAHEB BABAGOUDA PATILALIAS B.B.
PATIL
S/O LATE SRI. BABAGOUDA PATIL
R/AT HOUSE NO.73, KPA BLOCK
1ST MAIN, CHANDRA LAYOUT
BANGALORE-560 040.
3. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R3;
SRI AJAY J.N., ADVOCATE FOR R2)

6

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DTD 30.03.2021 VIDE ANNX-C
PASSED BY R-1 AND ETC.

IN W.P.NO.7539/2021
BETWEEN:

1. SMT. SONY @SONIA PATIL
W/O SRI ANIL KUMAR PATIL
AGED ABOUT 37 YEARS
2. ANSH PATIL
S/O ANIL KUMAR PATIL
AGED ABOUT 7 YEARS
3. AKIRA
D/O ANIL KUMAR PATIL
AGED ABOUT 3 YEARS

PETITIONER NOS.2 & 3 ARE MINORS ARE
REPRESENTED BY THEIR LEGAL GUARDIAN I.E
PETITIONER NO.1

ALL ARE RESIDENTS OF NO.73
KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

. . . PETITIONERS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

7

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560009
2. MR. BALASAHEB BABAGOUDE PATIL ALIAS B.B.
PATIL
S/O LATE BABAGOUDE PATIL
AGED ABOUT 71 YEARS
GARAGE PORTION OF GROUND FLOOR
HOUSE LPREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGLAORE-560040.
3. MR. ANIL KUMAR
S/O BALASAHEB BABAGOUDE PATIL
AGED ABOUT 42 YEARS
GROUND FLOOR
HOUSE PREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGALORE-560040.
4. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560009.

. . . RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R4;
SRI AJAY J.N., ADVOCATE FOR R2;
SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DATED 30.03.2021 VIDE
ANNEXURE-B PASSED BY R-1 AND ETC.

THESE CRIMINAL PETITIONS AND WRIT PETITIONS
HAVING BEEN HEARD AND RESERVED FOR ORDERS ON
22.06.2024, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the matter at hand, various legal provisions and acts are invoked creating a complex web of familial and legal disputes surrounding the residential property No.73 in Chandra Layout, Bengaluru. The legal saga surrounding the residential property in Chandra Layout, Bengaluru unfolds a tangled narrative of familial discord between a father and a son. These petitions are filed by father, mother and daughters on one side and the daughter-in-law on the other side. Therefore, this Court deems it fit to cull the family tree produced in the partition suit filed by son (Anilkumar) against his father, uncle, mother and sisters in O.S.No.41/2019. The family tree is as under:

Babagouda @ Babugouda (Dead) | | Shantabai (wife) (died) | | | | Balasaheb
Umannagouda Basannagouda (D1) @ Umeshgouda (D2) (D3) | | | Channamma
(wife) (D4) | | | _____ | | | Anil Ashwini
Shantala Swati (Pltf.) (D5) (D6) (D7)

2. The father BalasahebPatil, is a Retired Police Officer and therefore, claims that the residential house at Chandra Layout, Bengaluru is his self acquired property. The father asserts that while he was serving as Police Officer, he applied for allotment of plot to the BDA and the authorities have allotted a site on 31.03.1999 and sale deed is executed on 29.03.2014. At its core lies a fundamental disagreement between BalasahebPatil and his son, Anilkumar, regarding the nature of the property. The family owns several agricultural lands, commercial properties and sites at Bijapur and other cities. There appears to be dispute after BalasahebPatil asserted that the residential house at Chandra Layout is his self acquired property whereas his son Anilkumar contends it to be a joint family ancestral property. This foundational dispute has led to a series of legal battles between father and son that delve into complex intersections of family dynamics and legal statutes.

3. The father BalasahebPatil lodged a complaint before the Deputy Commissioner of Police on 30.04.2019 requesting the police officer to take suitable action against his son and deliver possession of second and third floors of the residential house to enable him to lead a peaceful life. This action of father led son to institute a partition suit in O.S.No.41/2019 on the file of the Senior Civil Judge, Sindgi. It seems on receipt of summons, father (BalasahebPatil) filed a petition in Misc. Petition No.69/2019-20 against son under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "Senior Citizens Act, 2007") requesting to evict the son and his family members from the schedule property and to handover physical possession of

second floor and third floor. Simultaneously, Anilkumar's wife namely Sony @ Sonia Patil initiates legal action under the Domestic Violence Act, 2005 (for short "D.V. Act, 2005) alleging harassment and seeking remedies against in-laws and sisters-in-law. The miscellaneous petition filed by father was allowed by the authority and Anilkumar (son) was directed to handover vacant possession to the father.

4. Challenging the order passed by the Assistant Commissioner under Sections 5 and 23 of D.V.Act, 2005 calling upon the son to handover vacant possession, two petitions are filed before this Court. Anilkumar (son) assailing the eviction order of the Tribunal dated 30.03.2021 has filed a petition in W.P.No.7470/2021. The daughter-in-law and children though not party before the Tribunal have also questioned the eviction order of the Tribunal in W.P.No.7539/2021. The proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 is also challenged by the in-laws in two petitions. Balasaheb Patil's brother namely Basanagouda Patil assailing the proceedings initiated by daughter-in-law under the provisions of the D.V.Act, 2005 has filed Crl.P.No.4818/2020. Balasaheb Patil and his wife are seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 by filing Crl.P.No.5479/2020 (D.V.Act, 2005).

5. Learned counsel appearing for the father, mother and daughters in all these petitions placing reliance on the judgments has vehemently argued and contended that the residential house situated at Chandra Layout, Bengaluru, is self acquired property of the father and has further pointed out that father while serving as a Police Officer applied for a vacant site and the BDA executed lease cum sale agreement dated 05.05.1999 and thereafter obtained registered sale deed from BDA. He would also point out that father has constructed a residential house in 1999 and the construction is completed somewhere in the month of October 2005 while he was serving as a Police Officer. He would further point out that first and second floor is constructed in 2008-09 and the constructions are made by father by utilizing savings and retirement funds and therefore, son has no right in the residential house.

6. Reiterating the grounds, he would further vehemently argue and contend that daughter-in-law Sony has no locus to question the order passed by the Assistant Commissioner under Sections 5 and 23 of Senior Citizen Act, 2007 as she is not a party to the proceedings. Therefore, W.P.No.7539/2021 is not maintainable and the same is liable to be dismissed. He has vehemently argued and contended that daughter-in-law's invocation of domestic violence is patently manipulative and the proceedings are initiated only to get over the eviction order passed under the Senior Citizens Act, 2007. He would further point that there are absolutely no allegations against husband Anilkumar by the daughter-in-law and the sole allegations are that it is a shared household as it belongs to the joint family. Therefore, he would contend that the proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 being collusive are liable to be quashed by this Court.

7. Learned counsel placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of Skanda Sharath vs. Assistant Commissioner¹ would point out that even if there is a claim by the rival parties asserting that properties are joint family properties, the Tribunal can order for eviction even in respect of a joint family property. Referring to the partition suit filed by the son, he would point out that the trial Court while considering the application filed under Order 39, at the first

instance, rightly declined to grant injunction having taken cognizance of title documents insofar as residential house at Bengaluru is concerned. 2019 SCC Online Kar 3533

8. Reliance is placed on the judgment rendered by the Delhi High Court in the case of Aditya Gupta vs. Narender Gupta & Others². While taking this Court through the dictum laid down by the Delhi High Court, he would point out that the dispute regarding nature of the property needs to be adjudicated by a competent civil Court and until the rights are decided in a final decree proceedings, it is immaterial whether the property is joint family property and therefore, Balasaheb Patil as a senior citizen is entitled to seek eviction of his son by invoking the provisions of Senior Citizens Act, 2007.

9. Referring to Section 27 of Senior Citizens Act, 2007 he would further contend that jurisdiction of Civil Court stands ousted under Section 27 of Senior Citizens Act, 2007 and therefore, pendency of partition suit in O.S.No.41/2019 will not act as an impediment for a senior citizen to work out efficacious remedy provided under Senior Citizens Act, 2007.

10. He would vehemently argue and contend that in the present set of facts the son cannot set up his wife to defeat the proceedings conferred on a senior citizen under the provisions of Senior Citizens Act, 2007. He would contend that son has set up his wife and proceedings under D.V. Act, 2005 are initiated only to get over the eviction order passed by the Tribunal. He would vehemently counter the respondents' reliance placed on the judgment rendered by the Hon'ble Apex Court in the case of S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Others³. Referring to the dictum, he would point out that the ratio laid down by the Apex Court in the above case are applicable only when provisions of Senior Citizens Act, 2007 are 2020 SCC Online SC 1023 misused to override the proceedings instituted under the D.V. Act, 2005.

11. He would further place reliance on the judgments rendered in the case of Ganesh and Ors. Vs. Sau. Nikita & Another⁴, Prabhakar Mohite vs. State of Maharashtra⁵, Namdeo Babaji Bangde vs. State of Maharashtra⁶ and Anil Kumar Dhiman vs. State of Haryana⁷ and would contend that the Delhi, Bombay and Haryana High Courts have clearly held that even if criminal cases are lodged by wife against in-laws, the eviction order passed under Senior Citizens Act, 2007 was upheld. He would further contend that Domestic Violence proceedings can be maintained only with respect to a shared household. Referring to the principles laid down by the (2021) SCC Online Bom 1290 2018 SCC Online Bom 2775 AIR 2022 Bom 151 AIR Online 2021 P&H 1036 Hon'ble Apex Court in the case of Satish Chander Ahuja vs. Sneha Gupta⁸, he would contend that a shared household has to be understood as a household where husband is entitled to reside. Referring to the title documents relating to residential house at Bengaluru, he would point out that son admittedly residing as a licensee, daughter-in-law would not have a better right and therefore, the proceedings initiated by the daughter-in-law under the provisions of D.V. Act, 2005 are not maintainable.

12. Learned Senior Counsel Sri. Jayakumar S. Patil, while countering the arguments advanced by the learned counsel appearing for the father, mother and daughters primarily raised objection in regard to the maintainability of Crl.P.No.5479/2020 and 4818/2020 seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 under the provisions (2021) 1 SCC 414 of D.V. Act, 2005. He

would contend that the proceedings initiated under the D.V.Act, 2005 being basically civil in nature provides different civil remedies to aggrieved women and therefore, he would contend that the proceedings under DV Act, 2005 being quasi civil nature, the petitioners cannot invoke the provisions of Section 482 of Cr.P.C. and therefore, these petitions are not maintainable and are liable to be dismissed. He would point out that the Domestic Violence proceedings are not amenable to Section 482 proceedings.

13. To buttress his arguments, reliance is placed on the judgment rendered by the Madras High Court and also the ratio laid down by the Hon'ble Apex Court in the case of Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another⁹. Learned Senior Counsel while (2016) 11 SCC 774 bringing to the notice of this Court in regard to the interim arrangement made vide order dated 02.12.2021 would point out that the fact that a comprehensive partition suit is pending, neither the son nor the daughter-in-law can be evicted from the premises. While assailing the order of the Tribunal under Section 23 read with Section 5 of Senior Citizens Act, 2007 learned Senior Counsel would point out that there is no question of transfer of a property and therefore, the Tribunal has no jurisdiction to invoke the provisions of Senior Citizen Act, 2007 and pass the eviction order. The proceedings initiated by the father under the provisions of Senior Citizens Act admittedly does not pertain to grant of maintenance to senior citizens and there is no issue involved in regard to transfer of property and therefore, learned Senior Counsel would point out that petition filed by the father BalasahebPatil against his son seeking eviction under the provisions of Senior Citizens Act, 2007 is not maintainable. He would further point out that order of eviction cannot be enforced against daughter-in-law and minor children when admittedly they are not parties to the proceedings under Senior Citizens Act, 2007 and more particularly when a petition under D.V. Act, 2005 is pending consideration.

14. Learned Senior Counsel has further placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Prabha Tyagi vs. Kamlesh Devi¹⁰. Learned Senior Counsel would further contend that petition under Senior Citizens Act, 2007 is not maintainable when suit for partition is pending consideration before the competent civil Court. On these set of grounds, he would point out that the eviction order passed by the Tribunal in Misc.Petition 2022 SCC Online SC 607 No.69/2019 under Sections 5 and 23 of Senior Citizens Act, 2007 is not sustainable and therefore, the petitions filed by son Anilkumar in W.P.No.7470/2021 and writ petition filed by daughter- in-law and children in W.P.No.7539/2021 deserves to be allowed. He would further request this Court to dismiss the petitions filed under Section 482 filed in Crl.P.Nos.5479/2020 and 4818/2020.

15. Heard learned counsel appearing for the petitioners and learned Senior Counsel appearing for the respondents. I have given my anxious consideration to the material on record and the judgments produced by both the parties.

16. The present case revolves around a prime residential property located in Chandra Layout, Bengaluru. BalasahebPatil asserts that he applied for allotment of plot to the BDA while serving in the police department and subsequently, constructed a house out of his self earnings and service benefits. In view of son filing a partition suit and asserting that the present petition property is an ancestral property, BalasahebPatil (father) filed a petition under Sections 5 and 23 of the Senior

Citizens Act, 2007 seeking eviction order against his son Anilkumar. The Tribunal having recognized the need to protect the rights of BalasahebPatil who is a senior citizen has issued eviction order calling upon his son Anilkumar and his family members to vacate the premises.

17. The daughter-in-law alleging that she has a right to reside in the shared household has filed a petition under Sections 17, 18, 19 and 23 of the D.V. Act, 2005 alleging ill-treatment and domestic discord under the provisions of D.V. Act.

18. Having heard learned counsel on record and learned Senior Counsel appearing for the son and daughter-in-law, one of the primary issue that needs consideration at the hands of this Court is as to whether the proceedings under the D.V. Act, 2005 can be maintained when there is already an eviction order under the Senior Citizens Act, 2007. Another issue that has arisen for consideration is as to whether the father Balasaheb along with his children and his brother can maintain a petition under Section 482 challenging the domestic violence proceedings. This Court is also called upon to examine as to whether the protection and reliefs claimed by the daughter-in-law under the D.V.Act, 2005 can supersede the eviction order granted under the Senior Citizens Act, 2007.

19. The object of Domestic Violence Act:

The Domestic Violence Act aims to provide several remedies to an aggrieved women and protect them against any form of domestic violence as emphasized in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra). However, the primary object of D.V. Act, 2005 does not negate the rights and protection afforded to senior citizens under the Senior Citizens Act, 2007. The pleadings in the partition suit filed by son Anilkumar indicates that he and his wife (Sony-daughter-in-law) are asserting interest in the residential house at Bengaluru since its inception. Para 12 of the plaint would give an indication as to why this dispute has arisen between father and the son and the said pleadings would also enable this Court to assert whether son to overcome an eviction order under the provisions of Senior Citizens Act, 2007 has set up his wife to invoke the provisions of Domestic Violence Act. Para 12 of the plaint is extracted and the same reads as under:

"12. That, as promised by my parents and other family members there was a family arrangement to give the said house situated at Chandra Layout, Bengaluru to me for the preservation of peace, honour of the family and for the avoidance of the litigation and as a security to me, and my wife, later on to my children and with a purpose of establishing and ensuring amenities as good will amongst the relations with a condition that the said house shall continue as 'dwelling house' for me my family and my parents and the said family arrangement was arrived at the time of engagement held at the dwelling house, situated at Chandra Layout Bangalore, a couple of months before my marriage, in the presence of relatives of both the sides (bride & bridegroom). The said family arrangement is final and binding on the parties. That, my marriage with Sony @ Sonia was performed on 27-05-2011."

20. A cursory look at the above culled out paragraph clearly gives an indication that the marriage of Anilkumar with Sony was solemnized with an assurance that the prime residential property at Bengaluru would ultimately go to the son. The material placed on record *prima facie* demonstrates that father (BalasahebPatil) while he was serving as a Police officer applied for a site by submitting an application to the BDA and subsequently, constructed a house. Anilkumar's assertion that a family arrangement is already made prior to the marriage ensuring that the disputed residential house would be preserved for him, his wife Sony and their children and that this arrangement is made for preservation of peace and honour within the family and to avoid litigation further substantiates the father's assertion and claim that the residential house being his self acquired property is entitled for protection and there is a bitterness and acrimony between father and son and also daughter-in-law.

21. Both the parties have cited judgments in support of their contention. This Court has examined the precedents to address the issue raised in the captioned petitions. The ratio laid down by the Hon'ble Apex Court in the case of *S.Vanitha vs. Deputy Commissioner*(*supra*) has no application to the present case on hand. In the said case, son to resist wife's petition under the provisions of Domestic Violence Act gifted the property to his father and set up his father only to resist the right of a wife to claim right of the residence.

22. The Senior Citizens Act, 2007 provides for the eviction of children or relatives if necessary to ensure the dignity, peace, and maintenance of senior citizens. However, this provision must be harmonized with the D.V. Act,2005 which protects a woman's right to reside in her shared household, ensuring neither Act's provisions are unjustly negated, as highlighted in *Vanita v. Deputy Commissioner & Ors*(*supra*). The interpretation of statutory provisions must align with the legislative objectives, as emphasized in *Skanda Sharath v. Assistant Commissioner* (*supra*), to protect senior citizens' rights comprehensively. Eviction rules under the Senior Citizens Act, 2007, as noted in *Darshana vs. Govt. of NCT*¹¹, should include daughters-in-law to ensure broad protection for senior citizens. Cases such as *Sachin and another vs. Jhabbu Lal*¹² and *Anil Kumar Dhiman and another vs. State of Haryana and others*¹³ affirm that sons can reside in their father's self-acquired property only with the father's permission, irrespective of their marital status. Further, *Santosh Surendra Patil v. Surendra Narasgonda Patil and others*¹⁴ illustrates that tribunals can nullify property transfers to children who fail to maintain their parents, and *Manmohan Singh v. State of Union Territory, Chandigarh* and AIR online 2018 DEL 2358 AIR 2017 DELHI 2017 Crwp.1357-2019 DD. 21.09.2021 Wp.1791/2016 DD 23.06.2017 Others¹⁵ clarifies that sons living on their father's property as licensees must vacate upon notice of termination, underscoring that they do not have an inherent right to remain. Thus, these legal precedents collectively reinforce the Senior Citizens Act's objective to safeguard senior citizens' rights while balancing it with the protective measures under the D.V. Act, 2005.

23. The Senior Citizens Act, 2007 will prevail over all other Acts, ensuring the protection and well-being of senior citizens. As highlighted in various judgments, the Senior Citizens Act, 2007 allows for the eviction of children or relatives to safeguard the rights of senior citizens. The Court's interpretation consistently emphasizes the harmonious application of both the D.V. Act, 2005 and the Senior Citizens Act, CWP.1365 of 2015 2007, ensuring comprehensive protection for vulnerable

individuals within family dynamic

24. In the present case, there is no dispute between the son and his wife. Therefore, the daughter-in-law is not an aggrieved person under the D.V. Act, 2005. The son is residing as a licensee in his father's house, and the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law in this context. In the present case on hand, the facts are diagonally opposite to the facts in the case cited supra. In the present case on hand, this Court is concerned with father's need for the property to maintain himself and his wife and therefore, senior citizens right over the property holds significant weight especially, considering his retirement and financial needs. Moreover, the son's financial stability as evident by his engineering profession, diminishes the urgency for him to retain possession of the property. Therefore, this Court is of the view that daughter-in-law's invocation of D.V.Act, 2005 seemingly in collusion with her husband, to thwart eviction, lacks merit.

25. In the light of the principles laid down by the Hon'ble Apex Court in the above cited judgment, what emerges is that an aggrieved women is given protection under the provisions of D.V. Act, 2005. The primary object of D.V.Act, 2005, is to give protection to women against any form of domestic violence as outlined in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra).

26. In the present case on hand, the relationship between son and his wife Sony is cordial. The records also reveal that both have engaged a common counsel and are contesting the eviction order secured by BalasahebPatil under the provisions of Senior Citizens Act, 2007.

27. The Hon'ble Apex Court in the case of S.R.Batra vs. Taruna Batra¹⁶ while examining the definition of "shared household" in Section 2(s) of the D.V. Act, 2005 together with the sweep of Section 17 construed that aggrieved wife can claim any household as shared household where she is living or at any point of time lived together with her husband. But it is against all cannons of law that there will be encroachment on the proprietary interest of a third party in the property owned by him/her simply because the aggrieved wife had occasion to live and occupy that property either jointly or singly. Without declaring Section 2(s) as ultra vires, it has been held by the Hon'ble Apex Court that the true meaning of the above provision is that any household in which the (2007) 3 SCC 169 aggrieved wife's husband has a right, title and interest and the wife's right of residence on the ground that there is an ill-treatment is not absolute.

28. If the choice is between two statutes and warrants interpretation, the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

29. From the records what emerges is that daughter-in-law has not placed any material to substantiate that she is an aggrieved person as defined under Section 2(a) of the D.V. Act, 2005. The daughter-in-law also cannot seek protection and assert her right to reside in the disputed residential house by taking benefit of proviso to definition 2(q) of the D.V.Act, 2005.

30. This Court has carefully examined the provisions of both the Acts. In the present set of facts, this Court is more than satisfied that Senior Citizens Act, 2007 has an overriding effect as per Section 3. This Section gives Senior Citizens Act, 2007 a precedent over other inconsistent laws allowing senior citizens to seek eviction of their children or relative, if necessary. The Tribunal's authority to order eviction under Senior Citizens Act, 2007 is further supported by the dictum laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner (*supra*), which clearly underscores the Senior Citizens Act, 2007 broad protective measures for senior citizens.

31. In the light of statutory framework and judicial precedents, this Court is inclined to uphold the eviction order issued by the Senior Citizens Tribunal. The relief sought under the D.V. Act, 2005 by daughter-in-law (Sony) cannot supersede the eviction order as the Senior Citizens Act, 2007 has an overriding statutory authority in the present set of facts. The right created in favour of aggrieved person under the provisions of D.V. Act, 2005 is not an absolute right. The overall facts and circumstances in the present case on hand speaks in volume against the son and daughter-in-law. The son has clearly set up his wife. This Court is more than satisfied that daughter-in-law's invocation of D.V. Act, 2005, seemingly in collusion with her husband and the challenge to the eviction order passed by the Senior Citizens Tribunal by the daughter-in-law on the premise that her petition filed under Sections 17, 18, 19 and 23 of D.V. Act, 2005 is pending consideration is also misconceived.

32. This Court is also more than satisfied that the parties to the proceedings are affluent and are financially sound. Son is a qualified engineer and has sufficient income to support himself and his wife. The effect of playing fraud upon the Court has been considered by the Hon'ble Apex Court in the case of S.P.Chengalvaraya vs. Jagannath¹⁷. The Hon'ble Apex Court observed that "the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court". The Hon'ble Apex Court in the above cited judgment held that in such cases where false cases are filed, the discretion vests with the Court to summarily throw out such person at any stage of the litigation.

AIR 1994 SC 853 Regarding maintainability of 482 petitions seeking quashing of proceedings pending under the provisions of Domestic Violence Act:

33. The present case revolves around the contentious issue of whether petitions filed under Section 482 of the Criminal Procedure Code (Cr.P.C.), seeking to quash proceedings under the D.V. Act, 2005, are maintainable. The respondents, specifically the son and daughter-in-law, have vehemently contested the maintainability of these petitions. Their counsel relies heavily on the Supreme Court's decision in Shyamla Devda and Others vs. Parimala¹⁸, arguing that the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya¹⁹, which supports the respondents' position, was incorrectly deemed per incuriam. According to them, various High Courts, including Bombay, have consistently upheld (2020) 3 SCC 14 (2022) SCC Online Mad 5435 the maintainability of Section 482 petitions against D.V. Act, 2005 proceedings.

34. In considering the arguments presented, this Court has given careful consideration to the facts and legal principles at hand. It finds that the Supreme Court's decision in Shyamlal Devda(supra) primarily focused on a different aspect of law and did not directly address the issue of maintainability of Section 482 petitions challenging proceedings under the D.V. Act, 2005. Hence, reliance placed on Shyamlal Devda(supra) by the respondents' counsel regarding the inapplicability of the Madras High Court's judgment is not persuasive.

35. Contrary to the respondents' contention, the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya(supra) analyzed the specific provisions and nature of relief sought under the D.V. Act, 2005 comprehensively. It concluded that while Sections 17 to 23 of the Act provide civil remedies to aggrieved parties, any challenge to these proceedings should be through a writ petition under Article 227, limited to cases of patent lack of jurisdiction by the lower courts. This interpretation underscores the quasi-civil nature of the remedies provided under the Act.

36. The D.V.Act, 2005 represents a significant legislative effort to address domestic abuse comprehensively, going beyond traditional criminal remedies like Section 498A of the Indian Penal Code (IPC). It aims to empower Courts to issue various civil orders, including protection orders and monetary reliefs, which are distinct from criminal sanctions under the Act.

37. Sections 12, 18, 19, 20, 21, 22, and 23 of the D.V.Act, 2005 delineate these civil remedies, emphasizing the Act's intent to provide relief and protection to victims within domestic relationships. This statutory framework supplements existing laws without derogating from their provisions, as explicitly stated under Section 36 of the Act.

38. Therefore, considering the legislative intent and the specific provisions of the D.V. Act,2005, this Court finds that petitions filed under Section 482 challenging proceedings under the Act are not maintainable. Such challenges would be more appropriately addressed through a writ petition under Article 227, limited to cases where there is a clear lack of jurisdiction by the lower courts.

39. Conclusion:

(a) In light of the presented facts and relevant legal precedents, it is evident that the Senior Citizens Act, 2007 and the D.V.Act, 2005 must be harmoniously interpreted to ensure that neither Act's provisions are unjustly negated. This case involves the application of the Senior Citizens Act, 2007 to protect the rights and welfare of senior citizens, specifically the father's right to use his property for his maintenance and that of his wife.

(b) Relevance of Provisions and Precedents:
The Senior Citizens Act, 2007 is primarily

designed to protect the rights and dignity of senior citizens, ensuring they can live a peaceful and secure life. The Act empowers tribunals to order the eviction of children

or relatives who fail to maintain their parents. This protection is paramount, particularly in cases where the senior citizen's right to maintenance and peaceful living is at stake, as emphasized in *Aditya Gupta v. Narendra Gupta* (supra) and *Manmohan Singh v. UT Chandigarh*(supra).

The D.V. Act, 2005, on the other hand, is designed to protect women from abuse and harassment within domestic relationships, allowing them to seek various civil remedies. In *Vanita v. Deputy Commissioner & Ors*²⁰, the Court underscored the importance of ensuring that a woman's right to reside in her shared household is not unjustly compromised by the provisions of the SCA.

(c) Distinguishing Principles from Vanita Case:

In *Vanita v. Deputy Commissioner & Ors.* (supra), the son had transferred property to his father to avoid proceedings initiated by his wife under the D.V. Act, 2005. The Court held that the Senior Citizens Act, 2007 and D.V. Act, 2005 must be interpreted harmoniously, ensuring that the woman's AIR Online 2020 SC 897 right to reside in the shared household is not undermined.

(d) In the present case, there is no dispute between the son and his wife, indicating that the daughter-in-law is not an aggrieved person under the D.V.Act, 2005. The son's attempt to nullify the eviction order passed by the tribunal under the Senior Citizens Act, 2007 by having his wife initiate proceedings under the D.V. Act, 2005 is an apparent misuse of the Act's provisions. The son is residing as a licensee in his father's house, and therefore, the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law to challenge the eviction order.

(e) The Court must consider that the Senior Citizens Act, 2007 objective is to protect senior citizens' rights, including their right to maintenance and peaceful living. The son's financial stability and professional standing, as an engineer employed in a private company, further emphasize the necessity for the father to utilize his property for his and his wife's sustenance.

(f) The Court's interpretation consistently emphasizes the harmonious application of both the D.V.Act, 2005 and the Senior Citizens Act, 2007, ensuring comprehensive protection for vulnerable individuals within family dynamics. In the present case, the provisions of the Senior Citizens Act, 2007 will prevail, ensuring the protection and well-being of senior citizens. The father's right to use his property for his maintenance and that of his wife is paramount, and the son's attempt to use the D.V. Act, 2005 to nullify the eviction order is not permissible. The son, residing as a licensee, must vacate the property to ensure the father's right to peaceful living and maintenance is upheld.

(g) A petition filed under Section 482 of the CrPC to challenge the proceedings initiated under the D.V. Act, 2005 is not maintainable, as established in the case of

Arun Daniel &Ors. v. Suganya(supra).

The Court in this case clarified that the reliefs granted under Sections 17-23 of the D.V.Act, 2005 are civil in nature, designed to protect women from domestic violence by providing various civil remedies. These include residence orders, protection orders, and monetary reliefs. If there is a breach of these orders, it can be addressed under Section 31 of the D.V. Act, 2005 which prescribes penalties for such violations.

(h) The use of Section 482 of the CrPC, which allows the High Court to exercise its inherent powers to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, is not appropriate for challenging the merits of D.V.Act, 2005 proceedings. Instead, the remedy lies in filing a writ petition under Article 227 of the Constitution. Article 227 gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This provision can be invoked to challenge D.V. Act, 2005, proceedings only on the grounds of a patent lack of jurisdiction or a manifest error in the exercise of jurisdiction.

(i) In essence, the distinction lies in the nature of the relief sought and the appropriate legal remedy available. Section 482 of the CrPC is meant for addressing the abuse of Court processes and cannot be used to question the civil nature of D.V. Act, 2005 orders. The proper recourse is a writ petition under Article 227, ensuring that challenges to D.V. Act proceedings are based on jurisdictional grounds rather than substantive disputes over the orders themselves. This ensures a clear and orderly process for addressing grievances related to the D.V. Act, 2005 maintaining the integrity of both the Act and the judicial process.

40. In light of the statutory framework and judicial precedents, this Court upholds the eviction order issued by the Senior Citizen Tribunal. The reliefs sought under the D.V. Act, 2007 by daughter-in-law will not supersede the eviction order, as the Senior Citizens Act, 2007 has overriding statutory authority.

41. The Court dismisses WP No. 7470/2021 and WP No. 7539/2021, confirming the validity of the eviction order dated March 30, 2021. The temporary status quo orders granted in April 2021 were vacated, and Anil Kumar and his family are directed to vacate the premises within 30 days from the date of this judgment. Failure to comply with this directive would result in appropriate legal consequences. For the foregoing reasons this Court passes the following order:

ORDER

(i) WP No. 7470/2021 is dismissed.

(ii) WP No. 7539/2021 is dismissed.

(iii) The eviction order dated March 30, 2021, passed by the Senior Citizen Tribunal, is upheld.

(iv) The 482 petitions in Crl.P.No.4818/2020 and Crl.P.No.5479/2020 are dismissed as not maintainable: A writ under Article 227 is only maintainable in cases of patent lack of jurisdiction.

(v) Anil Kumar (petitioner in
W.P.No.7470/2021 and his wife and
children (petitioners in

W.P.No.7539/2021) are hereby directed to vacate the premises within 30 days from the date of this judgment.

Sd/-

JUDGE CA

Basanagouda vs Smt. Soni @ Sonia Patil on 12 July, 2024

1

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF July 12, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.5479 OF 2020

C/W

CRIMINAL PETITION NO.4818 OF 2020

WRIT PETITION NO.7470 OF 2021 (GM-RES)

WRIT PETITION NO.7539 OF 2021 (GM-RES)

IN CRL.P NO. 5479/2020

BETWEEN:

1. BALASAHEB PATIL
S/O. LATE. BABAGOURA PATIL
AGED ABOUT 72 YEARS
RETD. DEPUTY SUPERINTENDENT OF POLICE
2. SMT. CHANNAMMA PATIL
W/O. BALASHEB PATIL
AGED ABOUT 63 YEARS

BOTH ARE R/AT NO.004, GROUND FLOOR
PYRAMID TEMPLE BELL APARTMENT
KENCHENAHALLI, RAJARAJESWARINAGAR
BANGALORE-560 098.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

2

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS

3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

(RESPONDENT 2 AND 3 ARE MINORS
REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN).

4. ANIL KUMAR
S/O BALASAHEB PATIL
AGED ABOUT 43 YEARS
ALL ARE R/AT NO.73, KPA BLOCK
I MAIN, CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED UNDER U/S.482
CR.P.C, PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 PENDING ON THE FILE OF
M.M.T.C.-IV, BENGALURU AND ALLOW THIS CRL.P.

3

IN CRL.P.NO.4818/2020
BETWEEN:

1. BASANAGOUDA
S/O. LATE. BABAGOUDA PATIL
AGED ABOUT 60 YEARS
OCC. ENGINEER
R/AT NO. 115, 2ND MAIN
AMRUTHNAGAR, HEBBAL
BANGALORE-560 092.

2. SMT. ASHWINI
W/O. SATISH RACHANNA
AGED ABOUT 40 YEARS
R/AT FLAT NO. L-806
BRIGADE METROPOLIS
GARUDACHARAPALYA
MAHADEV PURA
BANGALORE-560 048.

3. SMT. SHANTALA
W/O. JAISHEEL DHANDARGI
AGED ABOUT 37 YEARS

PRESENTLY R/AT PYRAMID TEMPLE BELLS
GROUND FLOOR, B BLOCK
IDEAL HOMES LAYOUT
RR NAGAR, BANGALORE-560040.

...PETITIONERS

(BY SRI. AJAY J.N., ADVOCATE)

4

AND:

1. SMT. SONI @ SONIA PATIL
W/O. ANILKUMAR PATIL
AGED ABOUT 38 YEARS
2. CHI. ANSH PATIL
S/O. ANILKUMAR PATIL
AGED ABOUT 8 YEARS
3. KUM. AKIRA
D/O. ANILKUMAR PATIL
AGED ABOUT 4 YEARS

RESPONDENTS 2 & 3 ARE MINORS REPRESENTED BY
THEIR MOTHER AND NATURAL GUARDIAN
RESPONDENT NO. 1

ALL ARE R/AT NO.73, KPA BLOCK,
I MAIN , CHANDRA LAYOUT
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

THIS CRIMINAL PETITIONIS FILED U/S.482 CR.P.C,
PRAYING TO QUASH THE CRIMINAL PROCEEDINGS
AGAINST THE PETITIONERS PENDING IN
CRL.MISC.NO.120/2019 ON THE FILE OF IV M.M.T.C.,
BENGALURU AND ALLOW THIS CRIMINAL PETITION.

5

IN W.P.NO.7470/2021

BETWEEN:

SRI ANIL KUMAR
S/O SRI.BALASAHEB BABAGOUDA PATIL
AGED 42 YEARS
R/AT HOUSE NO.73

KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONER

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.
2. SRI. BALASAHEB BABAGOUDA PATILALIAS B.B.
PATIL
S/O LATE SRI. BABAGOUDA PATIL
R/AT HOUSE NO.73, KPA BLOCK
1ST MAIN, CHANDRA LAYOUT
BANGALORE-560 040.
3. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560 009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R3;
SRI AJAY J.N., ADVOCATE FOR R2)

6

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DTD 30.03.2021 VIDE ANNX-C
PASSED BY R-1 AND ETC.

IN W.P.NO.7539/2021
BETWEEN:

1. SMT. SONY @SONIA PATIL
W/O SRI ANIL KUMAR PATIL
AGED ABOUT 37 YEARS
2. ANSH PATIL
S/O ANIL KUMAR PATIL
AGED ABOUT 7 YEARS
3. AKIRA
D/O ANIL KUMAR PATIL
AGED ABOUT 3 YEARS

PETITIONER NOS.2 & 3 ARE MINORS ARE
REPRESENTED BY THEIR LEGAL GUARDIAN I.E
PETITIONER NO.1

ALL ARE RESIDENTS OF NO.73
KPA BLOCK, 1ST MAIN
CHANDRA LAYOUT
BANGALORE-560 040.

...PETITIONERS

(BY SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI A.MAHAMMED TAHIR, ADVOCATE)

7

AND:

1. THE ASSISTANT COMMISSIONER
BANGALORE NORTH SUB DIVISION
BANGALORE-560009
2. MR. BALASAHEB BABAGOURA PATIL ALIAS B.B.
PATIL
S/O LATE BABAGOURA PATIL
AGED ABOUT 71 YEARS
GARAGE PORTION OF GROUND FLOOR
HOUSE PREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGALORE-560040.
3. MR. ANIL KUMAR
S/O BALASAHEB BABAGOURA PATIL
AGED ABOUT 42 YEARS
GROUND FLOOR
HOUSE PREMISES NO.73,
KPA BLOCK, 1ST MAIN, CHANDRA LAYOUT
BANGALORE-560040.
4. THE TAHSILDAR
BANGALORE NORTH SUB DIVISION
BANGALORE-560009.

...RESPONDENTS

(BY SRI. SHIVA REDDY, AGA FOR R1& R4;
SRI AJAY J.N., ADVOCATE FOR R2;
SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE ORDER DATED 30.03.2021 VIDE
ANNEXURE-B PASSED BY R-1 AND ETC.

THESE CRIMINAL PETITIONS AND WRIT PETITIONS
HAVING BEEN HEARD AND RESERVED FOR ORDERS ON
22.06.2024, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the matter at hand, various legal provisions and acts are invoked creating a complex web of familial and legal disputes surrounding the residential property No.73 in Chandra Layout, Bengaluru. The legal saga surrounding the residential property in Chandra Layout, Bengaluru unfolds a tangled narrative of familial discord between a father and a son. These petitions are filed by father, mother and daughters on one side and the daughter-in-law on the other side. Therefore, this Court deems it fit to cull the family tree produced in the partition suit filed by son (Anilkumar) against his father, uncle, mother and sisters in O.S.No.41/2019. The family tree is as under:

Babagouda @ Babugouda (Dead) | | Shantabai (wife) (died) | | | | Balasaheb
Umannagouda Basannagouda (D1) @ Umeshgouda (D2) (D3) | | | Channamma
(wife) (D4) | | | _____ | | | Anil Ashwini
Shantala Swati (Pltf.) (D5) (D6) (D7)

2. The father BalasahebPatil, is a Retired Police Officer and therefore, claims that the residential house at Chandra Layout, Bengaluru is his self acquired property. The father asserts that while he was serving as Police Officer, he applied for allotment of plot to the BDA and the authorities have allotted a site on 31.03.1999 and sale deed is executed on 29.03.2014. At its core lies a fundamental disagreement between BalasahebPatil and his son, Anilkumar, regarding the nature of the property. The family owns several agricultural lands, commercial properties and sites at Bijapur and other cities. There appears to be dispute after BalasahebPatil asserted that the residential house at Chandra Layout is his self acquired property whereas his son Anilkumar contends it to be a joint family ancestral property. This foundational dispute has led to a series of legal battles between father and son that delve into complex intersections of family dynamics and legal statutes.

3. The father BalasahebPatil lodged a complaint before the Deputy Commissioner of Police on 30.04.2019 requesting the police officer to take suitable action against his son and deliver possession of second and third floors of the residential house to enable him to lead a peaceful life. This action of father led son to institute a partition suit in O.S.No.41/2019 on the file of the Senior Civil Judge, Sindgi. It seems on receipt of summons, father (BalasahebPatil) filed a petition in Misc. Petition No.69/2019-20 against son under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "Senior Citizens Act, 2007") requesting to evict the son and his family members from the schedule property and to handover physical possession of

second floor and third floor. Simultaneously, Anilkumar's wife namely Sony @ Sonia Patil initiates legal action under the Domestic Violence Act, 2005 (for short "D.V. Act, 2005) alleging harassment and seeking remedies against in-laws and sisters-in-law. The miscellaneous petition filed by father was allowed by the authority and Anilkumar (son) was directed to handover vacant possession to the father.

4. Challenging the order passed by the Assistant Commissioner under Sections 5 and 23 of D.V.Act, 2005 calling upon the son to handover vacant possession, two petitions are filed before this Court. Anilkumar (son) assailing the eviction order of the Tribunal dated 30.03.2021 has filed a petition in W.P.No.7470/2021. The daughter-in-law and children though not party before the Tribunal have also questioned the eviction order of the Tribunal in W.P.No.7539/2021. The proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 is also challenged by the in-laws in two petitions. Balasaheb Patil's brother namely Basanagouda Patil assailing the proceedings initiated by daughter-in-law under the provisions of the D.V.Act, 2005 has filed Crl.P.No.4818/2020. Balasaheb Patil and his wife are seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 by filing Crl.P.No.5479/2020 (D.V.Act, 2005).

5. Learned counsel appearing for the father, mother and daughters in all these petitions placing reliance on the judgments has vehemently argued and contended that the residential house situated at Chandra Layout, Bengaluru, is self acquired property of the father and has further pointed out that father while serving as a Police Officer applied for a vacant site and the BDA executed lease cum sale agreement dated 05.05.1999 and thereafter obtained registered sale deed from BDA. He would also point out that father has constructed a residential house in 1999 and the construction is completed somewhere in the month of October 2005 while he was serving as a Police Officer. He would further point out that first and second floor is constructed in 2008-09 and the constructions are made by father by utilizing savings and retirement funds and therefore, son has no right in the residential house.

6. Reiterating the grounds, he would further vehemently argue and contend that daughter-in-law Sony has no locus to question the order passed by the Assistant Commissioner under Sections 5 and 23 of Senior Citizen Act, 2007 as she is not a party to the proceedings. Therefore, W.P.No.7539/2021 is not maintainable and the same is liable to be dismissed. He has vehemently argued and contended that daughter-in-law's invocation of domestic violence is patently manipulative and the proceedings are initiated only to get over the eviction order passed under the Senior Citizens Act, 2007. He would further point that there are absolutely no allegations against husband Anilkumar by the daughter-in-law and the sole allegations are that it is a shared household as it belongs to the joint family. Therefore, he would contend that the proceedings initiated by the daughter-in-law in Crl.Misc.No.120/2019 being collusive are liable to be quashed by this Court.

7. Learned counsel placing reliance on the judgment rendered by the Hon'ble Apex Court in the case of Skanda Sharath vs. Assistant Commissioner¹ would point out that even if there is a claim by the rival parties asserting that properties are joint family properties, the Tribunal can order for eviction even in respect of a joint family property. Referring to the partition suit filed by the son, he would point out that the trial Court while considering the application filed under Order 39, at the first

instance, rightly declined to grant injunction having taken cognizance of title documents insofar as residential house at Bengaluru is concerned. 2019 SCC Online Kar 3533

8. Reliance is placed on the judgment rendered by the Delhi High Court in the case of Aditya Gupta vs. Narender Gupta & Others². While taking this Court through the dictum laid down by the Delhi High Court, he would point out that the dispute regarding nature of the property needs to be adjudicated by a competent civil Court and until the rights are decided in a final decree proceedings, it is immaterial whether the property is joint family property and therefore, Balasaheb Patil as a senior citizen is entitled to seek eviction of his son by invoking the provisions of Senior Citizens Act, 2007.

9. Referring to Section 27 of Senior Citizens Act, 2007 he would further contend that jurisdiction of Civil Court stands ousted under Section 27 of Senior Citizens Act, 2007 and therefore, pendency of partition suit in O.S.No.41/2019 will not act as an 2023 SCC Online Del 1127 impediment for a senior citizen to work out efficacious remedy provided under Senior Citizens Act, 2007.

10. He would vehemently argue and contend that in the present set of facts the son cannot set up his wife to defeat the proceedings conferred on a senior citizen under the provisions of Senior Citizens Act, 2007. He would contend that son has set up his wife and proceedings under D.V. Act, 2005 are initiated only to get over the eviction order passed by the Tribunal. He would vehemently counter the respondents' reliance placed on the judgment rendered by the Hon'ble Apex Court in the case of S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Others³. Referring to the dictum, he would point out that the ratio laid down by the Apex Court in the above case are applicable only when provisions of Senior Citizens Act, 2007 are 2020 SCC Online SC 1023 misused to override the proceedings instituted under the D.V. Act, 2005.

11. He would further place reliance on the judgments rendered in the case of Ganesh and Ors. Vs. Sau. Nikita & Another⁴, Prabhakar Mohite vs. State of Maharashtra⁵, Namdeo Babaji Bangde vs. State of Maharashtra⁶ and Anil Kumar Dhiman vs. State of Haryana⁷ and would contend that the Delhi, Bombay and Haryana High Courts have clearly held that even if criminal cases are lodged by wife against in-laws, the eviction order passed under Senior Citizens Act, 2007 was upheld. He would further contend that Domestic Violence proceedings can be maintained only with respect to a shared house hold. Referring to the principles laid down by the (2021) SCC Online Bom 1290 2018 SCC Online Bom 2775 AIR 2022 Bom 151 AIR Online 2021 P&H 1036 Hon'ble Apex Court in the case of Satish Chander Ahuja vs. Sneha Gupta⁸, he would contend that a shared house hold has to be understood as a household where husband is entitled to reside. Referring to the title documents relating to residential house at Bengaluru, he would point out that son admittedly residing as a licensee, daughter-in-law would not have a better right and therefore, the proceedings initiated by the daughter-in-law under the provisions of D.V. Act, 2005 are not maintainable.

12. Learned Senior Counsel Sri. Jayakumar S. Patil, while countering the arguments advanced by the learned counsel appearing for the father, mother and daughters primarily raised objection in regard to the maintainability of Crl.P.No.5479/2020 and 4818/2020 seeking quashing of the proceedings pending in Crl.Misc.No.120/2019 under the provisions (2021) 1 SCC 414 of D.V. Act, 2005. He

would contend that the proceedings initiated under the D.V.Act, 2005 being basically civil in nature provides different civil remedies to aggrieved women and therefore, he would contend that the proceedings under DV Act, 2005 being quasi civil nature, the petitioners cannot invoke the provisions of Section 482 of Cr.P.C. and therefore, these petitions are not maintainable and are liable to be dismissed. He would point out that the Domestic Violence proceedings are not amenable to Section 482 proceedings.

13. To buttress his arguments, reliance is placed on the judgment rendered by the Madras High Court and also the ratio laid down by the Hon'ble Apex Court in the case of Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another⁹. Learned Senior Counsel while (2016) 11 SCC 774 bringing to the notice of this Court in regard to the interim arrangement made vide order dated 02.12.2021 would point out that the fact that a comprehensive partition suit is pending, neither the son nor the daughter-in-law can be evicted from the premises. While assailing the order of the Tribunal under Section 23 read with Section 5 of Senior Citizens Act, 2007 learned Senior Counsel would point out that there is no question of transfer of a property and therefore, the Tribunal has no jurisdiction to invoke the provisions of Senior Citizen Act, 2007 and pass the eviction order. The proceedings initiated by the father under the provisions of Senior Citizens Act admittedly does not pertain to grant of maintenance to senior citizens and there is no issue involved in regard to transfer of property and therefore, learned Senior Counsel would point out that petition filed by the father BalasahebPatil against his son seeking eviction under the provisions of Senior Citizens Act, 2007 is not maintainable. He would further point out that order of eviction cannot be enforced against daughter-in-law and minor children when admittedly they are not parties to the proceedings under Senior Citizens Act, 2007 and more particularly when a petition under D.V. Act, 2005 is pending consideration.

14. Learned Senior Counsel has further placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Prabha Tyagi vs. Kamlesh Devi¹⁰. Learned Senior Counsel would further contend that petition under Senior Citizens Act, 2007 is not maintainable when suit for partition is pending consideration before the competent civil Court. On these set of grounds, he would point out that the eviction order passed by the Tribunal in Misc.Petition 2022 SCC Online SC 607 No.69/2019 under Sections 5 and 23 of Senior Citizens Act, 2007 is not sustainable and therefore, the petitions filed by son Anilkumar in W.P.No.7470/2021 and writ petition filed by daughter- in-law and children in W.P.No.7539/2021 deserves to be allowed. He would further request this Court to dismiss the petitions filed under Section 482 filed in Crl.P.Nos.5479/2020 and 4818/2020.

15. Heard learned counsel appearing for the petitioners and learned Senior Counsel appearing for the respondents. I have given my anxious consideration to the material on record and the judgments produced by both the parties.

16. The present case revolves around a prime residential property located in Chandra Layout, Bengaluru. BalasahebPatil asserts that he applied for allotment of plot to the BDA while serving in the police department and subsequently, constructed a house out of his self earnings and service benefits. In view of son filing a partition suit and asserting that the present petition property is an ancestral property, BalasahebPatil (father) filed a petition under Sections 5 and 23 of the Senior

Citizens Act, 2007 seeking eviction order against his son Anilkumar. The Tribunal having recognized the need to protect the rights of BalasahebPatil who is a senior citizen has issued eviction order calling upon his son Anilkumar and his family members to vacate the premises.

17. The daughter-in-law alleging that she has a right to reside in the shared household has filed a petition under Sections 17, 18, 19 and 23 of the D.V. Act, 2005 alleging ill-treatment and domestic discord under the provisions of D.V. Act.

18. Having heard learned counsel on record and learned Senior Counsel appearing for the son and daughter-in-law, one of the primary issue that needs consideration at the hands of this Court is as to whether the proceedings under the D.V. Act, 2005 can be maintained when there is already an eviction order under the Senior Citizens Act, 2007. Another issue that has arisen for consideration is as to whether the father Balasaheb along with his children and his brother can maintain a petition under Section 482 challenging the domestic violence proceedings. This Court is also called upon to examine as to whether the protection and reliefs claimed by the daughter-in-law under the D.V.Act, 2005 can supersede the eviction order granted under the Senior Citizens Act, 2007.

19. The object of Domestic Violence Act:

The Domestic Violence Act aims to provide several remedies to an aggrieved women and protect them against any form of domestic violence as emphasized in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra). However, the primary object of D.V. Act, 2005 does not negate the rights and protection afforded to senior citizens under the Senior Citizens Act, 2007. The pleadings in the partition suit filed by son Anilkumar indicates that he and his wife (Sony-daughter-in-law) are asserting interest in the residential house at Bengaluru since its inception. Para 12 of the plaint would give an indication as to why this dispute has arisen between father and the son and the said pleadings would also enable this Court to assert whether son to overcome an eviction order under the provisions of Senior Citizens Act, 2007 has set up his wife to invoke the provisions of Domestic Violence Act. Para 12 of the plaint is extracted and the same reads as under:

"12. That, as promised by my parents and other family members there was a family arrangement to give the said house situated at Chandra Layout, Bengaluru to me for the preservation of peace, honour of the family and for the avoidance of the litigation and as a security to me, and my wife, later on to my children and with a purpose of establishing and ensuring amenities as good will amongst the relations with a condition that the said house shall continue as 'dwelling house' for me my family and my parents and the said family arrangement was arrived at the time of engagement held at the dwelling house, situated at Chandra Layout Bangalore, a couple of months before my marriage, in the presence of relatives of both the sides (bride & bridegroom). The said family arrangement is final and binding on the parties. That, my marriage with Sony @ Sonia was performed on 27-05-2011."

20. A cursory look at the above culled out paragraph clearly gives an indication that the marriage of Anilkumar with Sony was solemnized with an assurance that the prime residential property at Bengaluru would ultimately go to the son. The material placed on record *prima facie* demonstrates that father (BalasahebPatil) while he was serving as a Police officer applied for a site by submitting an application to the BDA and subsequently, constructed a house. Anilkumar's assertion that a family arrangement is already made prior to the marriage ensuring that the disputed residential house would be preserved for him, his wife Sony and their children and that this arrangement is made for preservation of peace and honour within the family and to avoid litigation further substantiates the father's assertion and claim that the residential house being his self acquired property is entitled for protection and there is a bitterness and acrimony between father and son and also daughter-in-law.

21. Both the parties have cited judgments in support of their contention. This Court has examined the precedents to address the issue raised in the captioned petitions. The ratio laid down by the Hon'ble Apex Court in the case of *S.Vanitha vs. Deputy Commissioner*(*supra*) has no application to the present case on hand. In the said case, son to resist wife's petition under the provisions of Domestic Violence Act gifted the property to his father and set up his father only to resist the right of a wife to claim right of the residence.

22. The Senior Citizens Act, 2007 provides for the eviction of children or relatives if necessary to ensure the dignity, peace, and maintenance of senior citizens. However, this provision must be harmonized with the D.V. Act,2005 which protects a woman's right to reside in her shared household, ensuring neither Act's provisions are unjustly negated, as highlighted in *Vanita v. Deputy Commissioner & Ors*(*supra*). The interpretation of statutory provisions must align with the legislative objectives, as emphasized in *Skanda Sharath v. Assistant Commissioner* (*supra*), to protect senior citizens' rights comprehensively. Eviction rules under the Senior Citizens Act, 2007, as noted in *Darshana vs. Govt. of NCT*¹¹, should include daughters-in-law to ensure broad protection for senior citizens. Cases such as *Sachin and another vs. Jhabbu Lal*¹² and *Anil Kumar Dhiman and another vs. State of Haryana and others*¹³ affirm that sons can reside in their father's self-acquired property only with the father's permission, irrespective of their marital status. Further, *Santosh Surendra Patil v. Surendra Narasgonda Patil and others*¹⁴ illustrates that tribunals can nullify property transfers to children who fail to maintain their parents, and *Manmohan Singh v. State of Union Territory, Chandigarh* and AIR online 2018 DEL 2358 AIR 2017 DELHI 2017 Crwp.1357-2019 DD. 21.09.2021 Wp.1791/2016 DD 23.06.2017 Others¹⁵ clarifies that sons living on their father's property as licensees must vacate upon notice of termination, underscoring that they do not have an inherent right to remain. Thus, these legal precedents collectively reinforce the Senior Citizens Act's objective to safeguard senior citizens' rights while balancing it with the protective measures under the D.V. Act, 2005.

23. The Senior Citizens Act, 2007 will prevail over all other Acts, ensuring the protection and well-being of senior citizens. As highlighted in various judgments, the Senior Citizens Act, 2007 allows for the eviction of children or relatives to safeguard the rights of senior citizens. The Court's interpretation consistently emphasizes the harmonious application of both the D.V. Act, 2005 and the Senior Citizens Act, CWP.1365 of 2015 2007, ensuring comprehensive protection for vulnerable

individuals within family dynamic

24. In the present case, there is no dispute between the son and his wife. Therefore, the daughter-in-law is not an aggrieved person under the D.V. Act, 2005. The son is residing as a licensee in his father's house, and the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law in this context. In the present case on hand, the facts are diagonally opposite to the facts in the case cited supra. In the present case on hand, this Court is concerned with father's need for the property to maintain himself and his wife and therefore, senior citizens right over the property holds significant weight especially, considering his retirement and financial needs. Moreover, the son's financial stability as evident by his engineering profession, diminishes the urgency for him to retain possession of the property. Therefore, this Court is of the view that daughter-in-law's invocation of D.V.Act, 2005 seemingly in collusion with her husband, to thwart eviction, lacks merit.

25. In the light of the principles laid down by the Hon'ble Apex Court in the above cited judgment, what emerges is that an aggrieved women is given protection under the provisions of D.V. Act, 2005. The primary object of D.V.Act, 2005, is to give protection to women against any form of domestic violence as outlined in Kunapareddy Alias NookalaShanka Balaji vs. Kunapareddy Swarna Kumari and Another (supra).

26. In the present case on hand, the relationship between son and his wife Sony is cordial. The records also reveal that both have engaged a common counsel and are contesting the eviction order secured by BalasahebPatil under the provisions of Senior Citizens Act, 2007.

27. The Hon'ble Apex Court in the case of S.R.Batra vs. Taruna Batra¹⁶ while examining the definition of "shared household" in Section 2(s) of the D.V. Act, 2005 together with the sweep of Section 17 construed that aggrieved wife can claim any household as shared household where she is living or at any point of time lived together with her husband. But it is against all cannons of law that there will be encroachment on the proprietary interest of a third party in the property owned by him/her simply because the aggrieved wife had occasion to live and occupy that property either jointly or singly. Without declaring Section 2(s) as ultra vires, it has been held by the Hon'ble Apex Court that the true meaning of the above provision is that any household in which the (2007) 3 SCC 169 aggrieved wife's husband has a right, title and interest and the wife's right of residence on the ground that there is an ill-treatment is not absolute.

28. If the choice is between two statutes and warrants interpretation, the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

29. From the records what emerges is that daughter-in-law has not placed any material to substantiate that she is an aggrieved person as defined under Section 2(a) of the D.V. Act, 2005. The daughter-in-law also cannot seek protection and assert her right to reside in the disputed residential house by taking benefit of proviso to definition 2(q) of the D.V.Act, 2005.

30. This Court has carefully examined the provisions of both the Acts. In the present set of facts, this Court is more than satisfied that Senior Citizens Act, 2007 has an overriding effect as per Section 3. This Section gives Senior Citizens Act, 2007 a precedent over other inconsistent laws allowing senior citizens to seek eviction of their children or relative, if necessary. The Tribunal's authority to order eviction under Senior Citizens Act, 2007 is further supported by the dictum laid down by the Hon'ble Apex Court in the case of S.Vanitha vs. Deputy Commissioner (*supra*), which clearly underscores the Senior Citizens Act, 2007 broad protective measures for senior citizens.

31. In the light of statutory framework and judicial precedents, this Court is inclined to uphold the eviction order issued by the Senior Citizens Tribunal. The relief sought under the D.V. Act, 2005 by daughter-in-law (Sony) cannot supersede the eviction order as the Senior Citizens Act, 2007 has an overriding statutory authority in the present set of facts. The right created in favour of aggrieved person under the provisions of D.V. Act, 2005 is not an absolute right. The overall facts and circumstances in the present case on hand speaks in volume against the son and daughter-in-law. The son has clearly set up his wife. This Court is more than satisfied that daughter-in-law's invocation of D.V. Act, 2005, seemingly in collusion with her husband and the challenge to the eviction order passed by the Senior Citizens Tribunal by the daughter-in-law on the premise that her petition filed under Sections 17, 18, 19 and 23 of D.V. Act, 2005 is pending consideration is also misconceived.

32. This Court is also more than satisfied that the parties to the proceedings are affluent and are financially sound. Son is a qualified engineer and has sufficient income to support himself and his wife. The effect of playing fraud upon the Court has been considered by the Hon'ble Apex Court in the case of S.P.Chengalvaraya vs. Jagannath¹⁷. The Hon'ble Apex Court observed that "the Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court". The Hon'ble Apex Court in the above cited judgment held that in such cases where false cases are filed, the discretion vests with the Court to summarily throw out such person at any stage of the litigation.

AIR 1994 SC 853 Regarding maintainability of 482 petitions seeking quashing of proceedings pending under the provisions of Domestic Violence Act:

33. The present case revolves around the contentious issue of whether petitions filed under Section 482 of the Criminal Procedure Code (Cr.P.C.), seeking to quash proceedings under the D.V. Act, 2005, are maintainable. The respondents, specifically the son and daughter-in-law, have vehemently contested the maintainability of these petitions. Their counsel relies heavily on the Supreme Court's decision in Shyamla Devda and Others vs. Parimala¹⁸, arguing that the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya¹⁹, which supports the respondents' position, was incorrectly deemed per incuriam. According to them, various High Courts, including Bombay, have consistently upheld (2020) 3 SCC 14 (2022) SCC Online Mad 5435 the maintainability of Section 482 petitions against D.V. Act, 2005 proceedings.

34. In considering the arguments presented, this Court has given careful consideration to the facts and legal principles at hand. It finds that the Supreme Court's decision in Shyamlal Devda(supra) primarily focused on a different aspect of law and did not directly address the issue of maintainability of Section 482 petitions challenging proceedings under the D.V. Act, 2005. Hence, reliance placed on Shyamlal Devda(supra) by the respondents' counsel regarding the inapplicability of the Madras High Court's judgment is not persuasive.

35. Contrary to the respondents' contention, the Madras High Court's Full Bench judgment in Arun Daniel vs. Suganya(supra) analyzed the specific provisions and nature of relief sought under the D.V. Act, 2005 comprehensively. It concluded that while Sections 17 to 23 of the Act provide civil remedies to aggrieved parties, any challenge to these proceedings should be through a writ petition under Article 227, limited to cases of patent lack of jurisdiction by the lower courts. This interpretation underscores the quasi-civil nature of the remedies provided under the Act.

36. The D.V.Act, 2005 represents a significant legislative effort to address domestic abuse comprehensively, going beyond traditional criminal remedies like Section 498A of the Indian Penal Code (IPC). It aims to empower Courts to issue various civil orders, including protection orders and monetary reliefs, which are distinct from criminal sanctions under the Act.

37. Sections 12, 18, 19, 20, 21, 22, and 23 of the D.V.Act, 2005 delineate these civil remedies, emphasizing the Act's intent to provide relief and protection to victims within domestic relationships. This statutory framework supplements existing laws without derogating from their provisions, as explicitly stated under Section 36 of the Act.

38. Therefore, considering the legislative intent and the specific provisions of the D.V. Act,2005, this Court finds that petitions filed under Section 482 challenging proceedings under the Act are not maintainable. Such challenges would be more appropriately addressed through a writ petition under Article 227, limited to cases where there is a clear lack of jurisdiction by the lower courts.

39. Conclusion:

(a) In light of the presented facts and relevant legal precedents, it is evident that the Senior Citizens Act, 2007 and the D.V.Act, 2005 must be harmoniously interpreted to ensure that neither Act's provisions are unjustly negated. This case involves the application of the Senior Citizens Act, 2007 to protect the rights and welfare of senior citizens, specifically the father's right to use his property for his maintenance and that of his wife.

(b) Relevance of Provisions and Precedents:
The Senior Citizens Act, 2007 is primarily

designed to protect the rights and dignity of senior citizens, ensuring they can live a peaceful and secure life. The Act empowers tribunals to order the eviction of children

or relatives who fail to maintain their parents. This protection is paramount, particularly in cases where the senior citizen's right to maintenance and peaceful living is at stake, as emphasized in *Aditya Gupta v. Narendra Gupta* (supra) and *Manmohan Singh v. UT Chandigarh*(supra).

The D.V. Act, 2005, on the other hand, is designed to protect women from abuse and harassment within domestic relationships, allowing them to seek various civil remedies. In *Vanita v. Deputy Commissioner & Ors*²⁰, the Court underscored the importance of ensuring that a woman's right to reside in her shared household is not unjustly compromised by the provisions of the SCA.

(c) Distinguishing Principles from Vanita Case:

In *Vanita v. Deputy Commissioner & Ors.* (supra), the son had transferred property to his father to avoid proceedings initiated by his wife under the D.V. Act, 2005. The Court held that the Senior Citizens Act, 2007 and D.V. Act, 2005 must be interpreted harmoniously, ensuring that the woman's AIR Online 2020 SC 897 right to reside in the shared household is not undermined.

(d) In the present case, there is no dispute between the son and his wife, indicating that the daughter-in-law is not an aggrieved person under the D.V.Act, 2005. The son's attempt to nullify the eviction order passed by the tribunal under the Senior Citizens Act, 2007 by having his wife initiate proceedings under the D.V. Act, 2005 is an apparent misuse of the Act's provisions. The son is residing as a licensee in his father's house, and therefore, the provisions of the D.V. Act, 2005 cannot be invoked by the daughter-in-law to challenge the eviction order.

(e) The Court must consider that the Senior Citizens Act, 2007 objective is to protect senior citizens' rights, including their right to maintenance and peaceful living. The son's financial stability and professional standing, as an engineer employed in a private company, further emphasize the necessity for the father to utilize his property for his and his wife's sustenance.

(f) The Court's interpretation consistently emphasizes the harmonious application of both the D.V.Act, 2005 and the Senior Citizens Act, 2007, ensuring comprehensive protection for vulnerable individuals within family dynamics. In the present case, the provisions of the Senior Citizens Act, 2007 will prevail, ensuring the protection and well-being of senior citizens. The father's right to use his property for his maintenance and that of his wife is paramount, and the son's attempt to use the D.V. Act, 2005 to nullify the eviction order is not permissible. The son, residing as a licensee, must vacate the property to ensure the father's right to peaceful living and maintenance is upheld.

(g) A petition filed under Section 482 of the CrPC to challenge the proceedings initiated under the D.V. Act, 2005 is not maintainable, as established in the case of

Arun Daniel &Ors. v. Suganya(supra).

The Court in this case clarified that the reliefs granted under Sections 17-23 of the D.V.Act, 2005 are civil in nature, designed to protect women from domestic violence by providing various civil remedies. These include residence orders, protection orders, and monetary reliefs. If there is a breach of these orders, it can be addressed under Section 31 of the D.V. Act, 2005 which prescribes penalties for such violations.

(h) The use of Section 482 of the CrPC, which allows the High Court to exercise its inherent powers to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, is not appropriate for challenging the merits of D.V.Act, 2005 proceedings. Instead, the remedy lies in filing a writ petition under Article 227 of the Constitution. Article 227 gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This provision can be invoked to challenge D.V. Act, 2005, proceedings only on the grounds of a patent lack of jurisdiction or a manifest error in the exercise of jurisdiction.

(i) In essence, the distinction lies in the nature of the relief sought and the appropriate legal remedy available. Section 482 of the CrPC is meant for addressing the abuse of Court processes and cannot be used to question the civil nature of D.V. Act, 2005 orders. The proper recourse is a writ petition under Article 227, ensuring that challenges to D.V. Act proceedings are based on jurisdictional grounds rather than substantive disputes over the orders themselves. This ensures a clear and orderly process for addressing grievances related to the D.V. Act, 2005 maintaining the integrity of both the Act and the judicial process.

40. In light of the statutory framework and judicial precedents, this Court upholds the eviction order issued by the Senior Citizen Tribunal. The reliefs sought under the D.V. Act, 2007 by daughter-in-law will not supersede the eviction order, as the Senior Citizens Act, 2007 has overriding statutory authority.

41. The Court dismisses WP No. 7470/2021 and WP No. 7539/2021, confirming the validity of the eviction order dated March 30, 2021. The temporary status quo orders granted in April 2021 were vacated, and Anil Kumar and his family are directed to vacate the premises within 30 days from the date of this judgment. Failure to comply with this directive would result in appropriate legal consequences. For the foregoing reasons this Court passes the following order:

ORDER

(i) WP No. 7470/2021 is dismissed.

(ii) WP No. 7539/2021 is dismissed.

(iii) The eviction order dated March 30, 2021, passed by the Senior Citizen Tribunal, is upheld.

(iv) The 482 petitions in Crl.P.No.4818/2020 and Crl.P.No.5479/2020 are dismissed as not maintainable: A writ under Article 227 is only maintainable in cases of patent lack of jurisdiction.

(v) Anil Kumar (petitioner in
W.P.No.7470/2021 and his wife and
children (petitioners in

W.P.No.7539/2021) are hereby directed to vacate the premises within 30 days from the date of this judgment.

Sd/-

JUDGE CA

Brigadier Maletira A Devaiah (Retd.) vs State Of Karnataka on 25 July, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

-1-

NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 55534 OF 2013 (KLR-RES)
C/W
WRIT PETITION NO. 27143 OF 2013 (KLR-RR/SUR)
WRIT PETITION NO. 27144 OF 2013 (KLR-RR/SUR)

WRIT PETITION NO. 38470 OF 2013 (KLR-RES)

IN W.P.NO.55534/2013
BETWEEN

1. BRIGADIER MALETIRA A DEVAIAH (RETD.)

AGED ABOUT 63 YEARS

FLAT NO. 536, JALAVAYU TOWERS

NGEF LAYOUT, INDIRA NAGAR POST

BANGALORE-560038

Digitally signed
by

NARAYANAPPA
LAKSHMAMMA

Location: HIGH
COURT OF
KARNATAKA

2. MR CHAPPANDA K NANAIAH

AGED ABOUT 68 YEARS

KOLATHODU, BYGODU VILLAGE
HATHUR POST
KODAGU-571218

3. COLONEL KALENGADA M GANAPATHY

AGED ABOUT 58 YEARS

A-102 MALAPRABHA

NATIONAL GAMES VILLAGE

KORAMANGALA
BANGALORE-560047

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013

WP No. 27144 of 2013

AND 1 OTHER

4. MR BATTIYANDA A JAGADEESH
AGED 49 YEARS
NARIYANDAD VILLGE
CHEYANDANE POST
VIRAJPET
SOUTH COORG-571218
5. MR PALANGANDA T BOPANNA
AGED ABOUT 63 YEARS
144/1, THIRD CROSS, BYRASANDRA ROAD,
JAYANAGAR 1STBLOCK EAST
BANGALORE-560011
6. BALLACHANDA A NANAYYA
AGED ABOUT 73 YEARS
DECHOOR
MADIKERI-571201
7. BOLLARPANDA K BOPANNA
AGED ABOUT 29 YEARS
BEGUR VILLAGE
KARGUNDA POST
MADIKERI TALUK
KODAGU-571201
8. PATTAMADA I KALAPPA
AGED ABOUT 82 YEARS
CHARAMBANE POST
MADIKERI
KODAGU-571201
9. IMUDIANDA P CARIAPPA
AGED ABOUT 73 YEARS
SURLABE VILLAGE POST
SOMAVARPET TALUK
KODAGU-571274
10. PULLIANDA B CHINAPPA
AGED ABOUT 63 YEARS
MAGULLA VILLAGE
IMANGALA POST

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WP No. 55534 of 2013

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WP No. 27144 of 2013
AND 1 OTHER

VIRAJPET
SOUTH KODAGU-571218

11. MACHIMANDA C APPACHU
AGED 66 YEARS
KAVADI VILLAGE
AMATHI POST
SOUTH KODAGU-571218
12. MACHETTIRA K MONAPPA
AGED 70 YEARS
NO. 2637 (17/B) 36TH A CROSS
9THBLOCK, JAYANAGAR
BANGALORE-5600069
13. KARTHAMADA M POONACHA
AGED 60 YEARS
BIRUNANI VILLAGE & PO
VIRAJPET
S COORG-571215
14. MALACHIRA P SOMAIAH
AGED 59 YEARS
NALLOR VILLAGE
KIRGOOR POST
KODAGU-571215
15. KUTTANDA M CHENGAPPA
AGED 65 YEARS
C/O K M IYAPPA
SITA NIVAS
AMMATHI TOWN AND POST
KODAGU-571211
16. CHETTRUMADA M POONACHA
AGED 62 YEARS
NALOOR VILL
KIRGOOR PO
S KODAGU-571215
17. KAMBANDA M JAGADESH

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AGED 53 YEARS
BETOLI VILLAGE & PO
VIRAJPET
KODAGU-571215

18.ALARANDA B MADAPPA
AGED ABOUT 31 YEARS
NALADI VILL
KAKABE PO
MADIKERI
KODAGU-571218

19.KAMBEYANDA M NANJAPPA
AGED ABOUT 42 YEARS
KUNJILA VILLAGE
KAKABE PO-571212

20.ALLAYANDA S AIYAPPA
AGED ABOUT 52 YEARS
NALADI VILLA ,KAKABE PO
MADIKERI
KODAGU-571212

21.PATAMADA U AIYAPPA
AGED 28 YEARS
S/O SANNA PULIKOT PO & VILL
IYAGERI, MADIKERI
KODAGU-571212

22.BACIMANDA P CHINAPPA
AGED 36 YEARS
KAKABE PO
KUNJLA VILLAGE
MADIKERI
KODAGU-571212

23.MARCHANDA K THIMMAIAH
AGED ABOUT 56 YEARS
MARNDODA VILL & P O
YAVAKAPADI-571212

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WP No. 27144 of 2013
AND 1 OTHER

24.BOLLAJIRA B AIYANNA
AGED ABOUT 31 YEARS
K BADAGA, FMKMC COLLEGE POST
MADIKERI-571201

25. AMMATANDA E MEDAPPA
AGED 29 YEARS
HAKATHUR VILL & POST
MADIKERI-571201
26. MACHAMADA K RAMESH
AGED ABOUT 56 YEARS
TAVALAGIRI VILLAGE
T SHETTIGERI POST
VIRAJPET
KODAGU-571218
27. MANNERA B NANJAPPA
AGED ABOUT 64 YEARS
HARIHARA VILL & POST VIRAJPET
KODAGU-571218
28. MALCHIRRA C ASHOK
AGED ABOUT 52 YEARS
AIYAPPA TEMPLE ROAD
PONNAMPET
VIRAJPET
KODAGU-561218
29. KOTRANGADA N MANU SOMAIAH
AGED ABOUT 51 YEARS
KAMATAKERI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
30. AJJAMADA A SUBRAMANI
AGED ABOUT 48 YEARS
KURCHI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
31. BADMANDA D LAVA
AGED ABOUT 41 YEARS

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AND 1 OTHER

- WEST NEMMALE
VIRAJPET
KODAGU-561218
32. HOTTENGADA R SOMANNA
AGED ABOUT 34 YEARS
HYSODULUR VILLAGE
HUDIKERI POST
VIRAJPET
KODAGU-561218
33. PUTHARIRA T KALAIAH

AGED 36 YEARS
CHETHALI VILLAGE AND POST
MADIKERI
KOKDAGU-561201
34. BALLEYADA G PRAKASH
AGED 32 YEARS
NAPOKULU VILL & POST
MADIKERI
KODAGU-561201
35. KORAVANDA C DEVAIAH
AGED ABOUT 30 YEARS
KADAGADAL VILL & PO
MADIKERI
KODAGU-561201
36. CHENDANDA C DEVAIAH
AGED 69 YEARS
BALGODU VILLAGE
BITANGALA POST
KODAGU DISTRICT-571218
37. THABBANGADA S CHITTIAPPA
AGED 68 YEARS
THAVALEGERI VILLAGE
T SHETTIGERI PO
VIRAJPET
SOUTH KODAGU-571218

...PETITIONERS

(BY SMT: SAROJINI MUTHANNA., ADVOCATE)

AND:

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NC: 2024:KHC:29383
WP No. 55534 of 2013
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WP No. 27144 of 2013
AND 1 OTHER

- 1 . STATE OF KARNATAKA
REP BY IT SECRETARY
DEPARTMENT OF REVENUE
VIDHAN SOUDHA
BANGALORE - 1
- 2 . SECRETARY TO GOVERNMENT
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION
VIDHAN SOUDHA
BANGALORE - 1
- 3 . DEPUTY COMMISSIONER
MADIKERI,
KODAGU 571 201

... RESPONDENTS

(BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KOLATHANDA U RAGU MACHAIH AGED ABOUT 58 YEARS SECOND RUDRAGUPPE VILLAGE KANDANGALA POST VIRAJPET TALUK KODAGU 571 218 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A NOTIFICATION NO. SAMYASHEE 53 SHASANA 2011, BANGALORE DT.1.2.2013 AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KIMMUDIRA A RAVI CHENGAPPA AGED ABOUT 50 YEARS MADENAD VILLAGE & PO MADIKERE TALUK KODAGU-571201 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN 1 . KETOLIRA P SOMANNA AGED ABOUT 51 YEARS YAVAKAPADI VILLAGE & PO MADIKERI, KODAGU-571212 2 . PANDANDA J. NARESH AGED ABOUT 50 YEARS

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NC: 2024:KHC:29383 AND 1 OTHER YAVAKAPADI VILLAGE & POST, MADIKERI, KODAGU-571212 3 . KALIYANDA A. AIYAPPA AGED ABOUT 35 YEARS KAKABE VILLAGE & P.O.

MADIKERI KODAGU-57212 4 . MANAVATIRA SUNNY POOVAIAH AGED ABOUT 46 YEARS F2, CRESCENT OPULNET, 12THCROSS, 13THMAIN, BTM, 2NDSTAGE, BANGALORE-76 ...PETITIONERS (BY SMT: SAROJINI MUTHANNA., ADVOCATE) AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011

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NC: 2024:KHC:29383 AND 1 OTHER ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ CAV ORDER

1. The Petitioner in W.P.No.55534/2013 is before this Court seeking for the following reliefs:

a. Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b. Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c. Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records. d. Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

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NC: 2024:KHC:29383 AND 1 OTHER e. Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

f. Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

2. The petitioner in W.P.No.27143/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013 as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.

d) Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

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NC: 2024:KHC:29383 AND 1 OTHER

f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

3. The Petitioner in W.P.No.27144/2013 is before this Court seeking for the following reliefs:

a) Declare the impugned Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b) Direct the Respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c) Direct the Respondents to refrain from asking holders of Jamma bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the

revenue records.

- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

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NC: 2024:KHC:29383 AND 1 OTHER

4. The Petitioner in W.P.No.38470/2013 is before this Court seeking for the following reliefs:

- a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
- b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
- c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.
- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

5. The Petitioners belong to the Kodava race (Coorg race). They claim to represent their respective Okka or joint family as shareholders of the joint family

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NC: 2024:KHC:29383 AND 1 OTHER properties of their respective clan. The lands owned by the joint family are customary privileged Jamma land tenures governed by customary laws that prohibit partition and alienation of these traditional lands, which they claim to be peculiar to the Coorgis/Kodava race.

6. The Petitioners are aggrieved by the Karnataka Land Revenue (III) Amendment Act 2011, by virtue of which an explanation is added to Subsection (2o) of Section 2 of the KLR Act as under:

(2o) "Occupant" means a holder in actual possession of unalienated land other than the tenant:

Provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Explanation.--A ryotwari pattadar in the Mangalore and Kollegal Area and Bellary District, a pattadar or shikmidar in the Gulbarga Area and a holder or land-holder including Jamma Bane privileged and un-privileged, Umbli land in the Coorg District shall be deemed to be an occupant of such land for purposes of this Act.

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NC: 2024:KHC:29383 AND 1 OTHER

7. Further amendment is made to Section 8o of the KLR Act where after the words "wherever situate" the following words are added "including unalienated Jamma Bane land held by the occupant in Coorg district" which after amendment reads as under:

8o. All land liable to pay land revenue, unless specially exempted.--All land, whether applied to agricultural or other purposes and wherever situate, including un-alienated Jamma Bane land held by the occupant in Coorg District, is liable to the payment of land revenue to the State Government according to the provisions of this Act, except such as may be wholly exempted under the provisions of any special contract with the Government or any provision of this Act or any other law for the time being in force.

Provided that the State Government may, by notification or order and subject to such conditions if any, as may be specified therein, for reasons to be recorded in writing, exempt either prospectively or retrospectively any class of lands in any area or areas or any part thereof from the payment of land revenue.

8. The Petitioners claim that these two amendments would disrupt the Kodava joint family, in furtherance of such amendment, the Revenue authorities are insisting the joint family members furnish a partition

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NC: 2024:KHC:29383 AND 1 OTHER deed for the purpose of entry of their name in the revenue records as 'Occupant', thereby forcing the joint family to execute a partition deed, when in fact they do not intend to do so. Such a demand is contrary to the customary and religious practice of the Kodava race and it is in that background that the Petitioners have filed the above petitions challenging the amendment.

9. Smt. Sarojini Muthanna, Learned Counsel for the Petitioners would submit that, 9.1. The amendments made are ultra vires the constitution thereby void. Prior to the amendments being made, the names of all members of the family were entered in the revenue records in the 9th column. After the amendment, the revenue authorities are seeking for a partition deed, as also a 11-E sketch demarcating the share of the person

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NC: 2024:KHC:29383 AND 1 OTHER who wants his name to be entered in the revenue records. Failure to furnish the above has resulted in not entering the names of such family members in the revenue records, thereby constraining and in fact, coercing the Kodava family to execute a partition deed, divide the property by metes and bounds, get a survey sketch done and thereafter place on record the partition deed and 11E sketch, and it is only thereafter that the entry is made in the revenue records.

9.2. Once a partition is executed and entry made in the revenue records, a joint family member who is registered as an occupant is treated as an absolute owner of the property, which has resulted in such occupants transferring the property to third parties, which is opposed to customary laws of Kodavas inasmuch as the properties are required to be retained as a joint

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NC: 2024:KHC:29383 AND 1 OTHER family property for the use and benefit of all members of the joint family. By alienating a portion of the property to third parties, the other members of the family are deprived of the usage of the said property. This is contrary to Section 100 of the KLR Act, which is reproduced hereunder for easy reference:

100. Occupancy not transferable without sanction of prescribed authority nor liable to process of a Civil Court.-- In any case, where an occupancy is not transferable without the previous sanction of the prescribed authority and such sanction has not been granted to a transfer which has been made or ordered by a Civil Court or on which the Court's decree or order is founded,--

(a) such occupancy shall not be liable to the process of any Court and such transfer shall be null and void; and

(b) the Court, on receipt of a certificate under the hand and seal of the Tahsildar, to the effect that any such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted, shall remove the attachment or other process placed on or set aside any sale of or affecting such occupancy.

9.3. She further submits that this is also contrary to the erstwhile Coorg Land Revenue Regulations, 1899 ['CLRR' for short], more particularly

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NC: 2024:KHC:29383 AND 1 OTHER Section 45 and 145, which are reproduced hereunder for easy reference:

45 Summary eviction in case of alienation of certain lands :-

Except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government. 'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

145. Bar of suits in certain matters :-

Except as otherwise provided by this Regulation, no suit shall be brought in any Civil Court in respect of any of the following matters, namely.

- (i) the limits of any land which has been defined by a Revenue Officer as land to which this Regulation does or does not apply;
- (ii) any claim to compel the performance of any duties imposed by this Regulation or by any other enactment for the time being in force or any Revenue Officer as such;
- (iii) any claim to the office or emoluments of parpattigar or Village Officer or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

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NC: 2024:KHC:29383 AND 1 OTHER

- (iv) any notification directing the making or revision of a record-of- rights;
- (v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;
- (vi) the correction of any entry in a record-of-rights, annual record or register of mutations; (vii) any notification of a general assessment having been sanctioned by the Central Government;
- (viii) the claim of any person as to liability for an assessment of land revenue or of any other revenue under this Regulation;
- (ix) the amount of land revenue to be assessed on any holding under this Regulation;
- (x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Regulation, or any cess, charge or rate to be assessed on any holding under this Regulation or under any other enactment for the time being in force;
- (xi) any claim to hold free of revenue or at favourable rates any land, mills, fisheries or natural products of land or water;
- (xii) any claim connected with or arising out of the collection of the land revenue by the Government or the enforcement by the Government of any process for the recovery thereof;
- (xiii) any claim to set aside on any ground, other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue;
- (xiv) the amount of, or the liability of any person to pay, any fees, fines, costs or other charges imposed under this Regulation;
- (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the

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NC: 2024:KHC:29383 AND 1 OTHER distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

(xvi) any claim arising out of the liability of an assignee of land revenue to pay a share of the cost of collecting or reassessing such revenue. 9.4. The Kodava joint family is forced to do the above, as without the entry of all the names of all the members of the joint family in the revenue records, such a member cannot approach any Bank for crop loan and, more importantly without the name being

entered into in the revenue records, no exemption is given to any member of the Kodava Race in respect of arms licence, for which verification is made upon the entry of their name in the revenue records.

9.5. Each Kodava 'Okka' (family) holding comprises of an 'Aiyne Mane' [main dwelling house] and a 'Kaimada' [temple for ancestors] located in the

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NC: 2024:KHC:29383 AND 1 OTHER said land which belongs to the entire joint family. On all occasions, both auspicious and inauspicious, as also during festivals, prayers are offered at these Kaimadas to their ancestors who are known as 'Karona'. Each and every member of the family is entitled to offer prayers to their ancestors. The Kodavas being ancestor worshippers, an alienation if made, of the land where the Kaimada is located would deprive all family members of their entitlement to ancestral worship, which is an essential practice of the Kodavas.

9.6. Kodavas are a separate ethnic minority having a distinct lifestyle, culture, tradition and custom, which is now upset by the impugned amendment. Apart from an Aiyne Mane and a Kaimada in the common lands, a 'Thutengalas' i.e. family graveyard is maintained. All members of the family are buried in that land

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NC: 2024:KHC:29383 AND 1 OTHER which is also part of the Jamma land. This land was also held in common by the joint family. 9.7. Once partition is effected this land would fall to the share of one particular family member, thus again disrupting the family activities. In the event of the said land being alienated and or the person to whose share this land falls under a partition deed, not permitting other family members to offer their prayers and or worship their elders, the rights of the other family members would be adversely affected. 9.8. Jamma Bane lands are privileged tenures in terms of Rule 164 of the CLRR, their inclusion under Subsection (20) of Section 2 would undo the Kodava customary laws. This aspect had been recognized by the British during their administration of the Coorg area and as such, no member of the joint family can seek or

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NC: 2024:KHC:29383 AND 1 OTHER transfer any land without the consent and concurrence of all other elder members of the family. Furthermore, there was a prohibition in transferring any land outside the patrilineal clan of the family, thus, the transfer was within the clan, safeguarding the interest of all members of the family. Jamma Bane lands were used for the purpose of preparing leaf manure, grazing of cattle, etc. and thus, were used as a part of this warg land (wet land). The manure generated from the Bane lands are used in the warg land, the cattle used to till the wet land would graze in the Bane land, etc. 9.9. Each Kodava family has a family name, which is also called the house name, which is used by each of the members of the family. The owner and/or occupant of the land in Coorg is not an individual member but an abstract family name/house name, and the

other members of

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NC: 2024:KHC:29383 AND 1 OTHER the family are treated as division holders or maintenance division holders who can use the land and the produce made therein for their maintenance.

9.10. The elder of the family is the 'Patedara' in whose name the property is registered by including the Bane land into a regular land, the said Bane land would become amenable to the imposition of tax even though there is no cultivation envisaged as regards the Bane lands. Jamma lands are of two varieties, alienated and unalienated. Alienated Jamma Bane lands were used for cultivation of coffee and unalienated Jamma lands are those attached to a paddy field or warg, sometimes it is called Jamma wargs which are only used for leaf manure and grazing of cattle, there being no cultivation in such lands. Until the amendment, these lands were never taxed by

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NC: 2024:KHC:29383 AND 1 OTHER the British or the Kings or, even after independence, by the Government, it is only now that these lands are sought to be taxed by way of the impugned amendment.

9.11. In this regard she relies upon page 520 of 'the Karnataka State Kodagu District Gazette' by Suryakanth Kamath, which is reproduced hereunder for easy reference:

The real object of enforcing these restrictions is vividly described in a letter to the Government of India dated 12.9.1865 and it was approved by the Government of India. "In regard to sale of Jamma lands, I am prepared to admit its advisability. Many impoverished Coorgs might wish to dispose off their lands (jamma) but I think official sanction to such a step should be withheld as hitherto as I believe it would be fraught with danger to the nationality of Coorgs and the tenure itself, of which the conditions of service are a mani feature, would be abrogated by permitting such land to fall into the hands of Europeans or natives of Mysore from whom a service like that rendered by Coorgs could not be expected".

9.12. She also relied on the publication of 'Land Systems of British India' by B.H. Baden

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NC: 2024:KHC:29383 AND 1 OTHER Powell, more particularly page 475 thereof, which is reproduced hereunder for easy reference:

6. Báné Lands.

(It has already been mentioned that with every holding of jamma land (and the same is true also of ságu land) in Coorg proper, the holder acquires the use of an appurtenant plot of 'báné land that is, a plot of forest land varying (and not always according to the size of the principal holding) from 4 or 5 to 300 acres. It is now, by rule, limited to double the area of the principal holding. The báné is located on the slopes above the valley where the rice- cultivation is, or somewhere near it, and it is destined to supply the warg-holder with grazing, timber, firewood, and above all with bamboos, branches, and herbage, which he burns on the rice- fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural domestic wants of the holder; and if timber, &c., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood. Sandal-wood trees found in báné land are always reserved as the property of Government. In the jamma tenure, as the báné is included in the sanad, it is virtually a part of the property. In the ságu tenure there is no sanad; but the attached area of báné must be held and used subject to the same conditions. Under these circumstances, the báné cannot be regarded as actually the property of the tenure-holder, nor, on the other hand, as land at the disposal of Government. It is rather land which is held as an appendage to a warg or estate, or to a ságu holding, in a sort of trust, or on condition for a certain use.)

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NC: 2024:KHC:29383 AND 1 OTHER Had the báné so remained, there would be nothing more to be said about it. In old days, in Central Coorg at any rate, no one wanted to cut trees for sale, for they had no market value; no one cultivated the báné, beyond raising a few orange or plantain-trees, or ploughing up parts where it was possible to raise a little dry cultivation which was not thought worthy of notice; hence the báné, as an appendage, did not subject the holding to any further revenue- assessment. But in time the land became more valuable, and people began to sell the trees, or what is more, to cultivate coffee. So long as this was done without general clearing, it did little harm; but in time, as larger clearances were made, the utility and natural purpose of the báné were threatened; and moreover the people soon attempted to alienate the land itself, selling or leasing it to coffee- planters; and when this was found profitable, fictitious 'wargs' were imagined and báné applied for under that pretence, and then used for coffee-planting.

The question of preventing these abuses soon arose, and 'báné' rules are now in force as regards assessment. It has for some years been allowed, as a concession, to cultivate coffee on ten acres in the báné without charge; and in 1875 a further concession was made to 'jamma' báné, so that coffee might be cultivated even in excess of ten acres provided that the bushes were planted under the natural forest without removing the large tree. All cultivation in excess of this is assessed. 9.13. Even though the Warg lands are held separately and even though alienated Jamma Bane lands are also held separately, the unalienated

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NC: 2024:KHC:29383 AND 1 OTHER Jamma Bane lands are held jointly and there can be no partition of such unalienated Jamma Bane lands. Her submission is that the privileged Jamma lands or lands of privileged tenants, though are heritable, are not transferable. By effecting a

partition, the very purpose of such privileged tenure is lost. Her submission is that the usage of the word privileged itself is a misnomer and misconstrued. Privilege is not defined under the Act, the word is used very loosely and has undergone changes from time to time. 9.14. Initially Jamma lands were granted to a member of the Coorg race by the then King for the services rendered in the Army by such member of the Coorg race and due to the lands being so granted and being privileged and being of the privileged tenure, the assessment of the said land was also on a reduced basis. She

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NC: 2024:KHC:29383 AND 1 OTHER refers to a Hukumnama issued by the then King regarding one such land and submits that the Jamma right holders paid only half the assessment in terms of the sannad issued by the King.

9.15. Section 45 of the CLRR restricts the sale of the property. The CLRR also provided for retention of the land in the family by not assessing the entire land.

9.16. Even as regards the alienated Jamma land, which is used for coffee plantation, 10 acres of coffee cultivated area was free from assessment and lands only in excess of 10 acres was assessed. Since most Bane lands had remained uncultivated, to encourage cultivation, 10 acres of such Bane lands used for cultivation remained free from assessment.

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NC: 2024:KHC:29383 AND 1 OTHER 9.17. The land used for cultivation was called 'privileged saguvali' and the lands which were not so used continued to be called "Jamma Bane". It is the land which was used for agricultural purposes but was also assessed to tax, those lands were called unprivileged Bane lands, thus the use of the terms 'privileged' and 'unprivileged' was only to indicate whether the land was subject to assessment of tax or not. 9.18. In the year 1974 this exemption from assessment was withdrawn and even privileged Jamma Bane lands were made amenable for full assessment, however the nomenclature of privileged Jamma Bane and unprivileged sagu bane has continued. She submits that this being the distinction, she relies on the Full Bench of this Court in the case of Cheekere Kariyappa Poovaiah -v- State of

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NC: 2024:KHC:29383 AND 1 OTHER Karnataka1, more particularly paras 11, 12, 13, 18, 19 and 22 thereof, which are reproduced hereunder for easy reference:

11. The aforesaid scheme of the Coorg Regulation and the clear picture of different types of Jama Banes which is projected bring-out one salient fact, that in case of privileged or unprivileged Banes which were not alienated and erstwhile Bane holders of such Bane lands continued to have limited privileges qua the Bane lands held by them viz., that they had to use the attached Bane for servicing the holding of the wet land which was held by them on Jama tenure and that he could use this Bane

for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this Bane for aforesaid limited purpose without any liability to pay any land revenue. It is also pertinent to note that in such privileged or unprivileged Bane, the concerned holder had no interest or right in the sub-soil of the Bane as clearly laid-down by Section 47 of the Regulations referred to earlier. He had also no interest in the wood of the trees standing on the Bane save and except taking wood for the limited domestic purposes, and for purposes of agriculture. He had no right to take the wood of trees for any commercial or other purposes unless he has paid the full timber value for cutting such trees, meaning thereby the trees were clearly shown to have been belonging to the Government, the timber of which could not be utilised by Bane holder unless he pays full price for the timber of such trees. This amounted to sale of timber wood by the Government to the concerned Bane holder. Such Banes held on privilege tenure also could not be alienated without paying nazarana as per Rule 167 to the Government.

That also indicated that such Bane holders had no proprietary interest in the land and when they wanted to alienate such privileged Bane lands held by them they had to pay nazarana to the Government apart from obtaining permission from the concerned authority under Section 45 and if that was not done he would be ILR 1993 KAR 2959

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NC: 2024:KHC:29383 AND 1 OTHER liable to be summarily evicted from such Bane, as that would be considered to be a Bane land, land revenue of which was considered to be wholly released. Therefore, on a conjoint reading of Sections 42, 45 and 47(1) of the Regulation and Rule 167 of the Rules framed thereunder, it becomes clear that holder of a Jama Bane land which was not alienated and which was either a privileged Bane or unprivileged Bane, was not proprietor of this Bane. But he had limited privilege as indicated in the definition of Bane found in the Regulation and therefore in the light of Section 42 such unalienated privileged or unprivileged Bane continued to vest in the Government.

12. This conclusion of ours is not in any way whittled down by sub-section 2 of Section 47 of the Regulation as it deals with a situation wherein for exercising any sub-soil rights in Bane lands mentioned in sub-section 1 Section 47, it becomes necessary either for the Government or any person acquiring rights from the Government to acquire any land in the holding or enjoyment of others. Then such land can be acquired under the provisions of Land Acquisition Act, 1894. This sub-section 2 naturally contemplates acquisition of some other lands and not acquisition of Bane lands itself as it continued to remain in the ownership of the Government. Working of sub-section 2 of Section 47 could better be highlighted by an illustration.

13. Supposing unalienated Bane land is held by a person, the sub-soil rights in which belong to Government. The Government enters into a contract with a Contractor permitting him to mine subsoil mineral found in the Bane-land and if such contractor had to approach the Bane land

through the land of somebody else, then to the extent somebody else's land viz., neighbour's land is to be utilised by way of passage for approaching the Bane land, that much portion of the land in possession of the neighbour could be acquired under the Land Acquisition Act, Section 47(2) cannot be read to mean that compensation is to be paid to the holder of unalienated Bane land by acquiring the Bane land as that situation would never arise in view of the fact that Bane land itself remains vested in the State.

18. The aforesaid provisions of 1964 Act clearly show that even after Coorg Regulation was repealed when the 1964 Act came into force, if a holder of Jamma

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NC: 2024:KHC:29383 AND 1 OTHER Bane land, whether privileged or unprivileged was holding the said Jama Bane land in the same condition then his privileges in Jama Bane land which existed earlier viz., utilising this land as an appendage to warg Jama holding for servicing the said warg and for enjoying privilege free of land revenue and also utilising the Bane land, for grazing of his cattle and for supplying leaf manure, fire-wood, timber required for domestic and agricultural purposes of the cultivator so long and he continued in possession of the wet land, were all preserved and continued to remain vested in him even after 1964 Act. That position is exemplified by Section 79 especially sub-section 2 thereof to which we have already made reference. Therefore, the status-quo-ante regarding privileges of Jama Bane land holder qua Jama Bane land as such as existed during the operation of 1899 Regulation continued to operate after 1964 Act but it never got enlarged into full-proprietory ownership of such holders qua their Jama Bane land. On the contrary the right to trees growing on the land which had continued to vest in the Government earlier did not get divested nor did it vest in Jamma Bane holder under 1964 Act and even sub-soil which did not vest in the Jama Bane holder under 1899 Regulation also did not get vested in the Jamma Bane holder. On the other hand as per Section 70 of the Act they all continue to remain vested absolutely in the State Government. We must however add one rider to this position. If, during the time of operation of 1899 Coorg Regulation or even priori thereto, the Jama Bane land had ceased to be a Jama Bane as such and had become an alienated Bane and had got detached from the Service yoke of the warg land to which earlier it was attached and if it was fully assessed, irrespective of the fact whether such separation of the Jamma Bane from the warg land to which it was attached was sanctioned under Rule 136 of the Coorg Rules by Deputy Commissioner or not, and whether any penal assessment was levied on such Jamma Bane holder or not, such Bane land holder could not be said to be having only limited privileges qua such alienated Banes. On the contrary if the Jamma Bane holder was the holder of any alienated Bane on the coming into force of Karnataka Land Revenue Act, 1964, he became an occupant of such fully assessed erstwhile Jamma Bane land and was entitled to all the rights and obligations of an occupant-holder of an unalienated land paying full assessment to the Government and therefore he became an occupant of such land within the meaning of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. In this connection we may also refer to one aspect of the matter which was brought to our notice and on which there cannot be any controversy.

19. During the time when Regulation 1899 was holding the field and even thereafter on many occasions the State of Karnataka acquired the rights of Jamma Bane land holders under Land Acquisition Act. Our attention was invited to the Coorg Gazette of 1956 to show a few samples of such Notifications. One such Notification found at page-39 of the Coorg Gazette refers to Government Notification dated 30-12-1955 seeking to acquire one privileged Jamma Bane land Survey No. 24/1 under the provisions of Land Acquisition Act. Similarly, at page No. 89 is found a Notification dated 2.2.1956 by which certain privileged Jamma Bane lands were sought to be acquired under Section 4(1) of the Land Acquisition Act 1894. Third such Notification is found at page No. 93. It refers to acquisition of privileged Jamma Bane land under Section 4(1) of the Land Acquisition Act. Similarly, such another Notification dated 20-2-1956 is found at page 94 of the Gazette. At page 117 is found a Notification dated 6.3.1956 seeking to acquire privileged Jamma Bane lands under Section 6 of the Land Acquisition Act 1894. Relying on these Notifications it was vehemently contended by learned Counsel for the Petitioners that these acquisition proceedings themselves show that the Government Authorities treated holders of privileged Jamma Bane lands as having proprietary interests, otherwise there would have been no occasion for the Government to acquire these lands. Now, it must be noted that even a privileged Jamma Bane holder had some interest or privilege in the Jamma Bane land though he may not be a full proprietor thereof. As we have noted earlier he had certain privileges flowing from his occupation of privileged Jamma Bane land. This type of privileges would necessarily show some restricted interest in these lands. If the Government wanted to abolish even these privileges and concessions which were otherwise giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under Land Acquisition Act, and obviously compensation was payable to such privileged Jamma Bane holders by evaluating their limited interest and not the full interest as the proprietor. Therefore, from the mere fact that these

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NC: 2024:KHC:29383 AND 1 OTHER privileged bane lands were put to acquisition it cannot be inferred of necessity that holders of such Jamma Bane lands were treated by the Government to be the full owners of such lands. As we have seen earlier except these limited privileges and concessions in privileged Jamma Bane lands they had no right in the sub-soil, they had no ownership of the trees growing thereon. They cannot even cultivate these lands. Therefore, they had merely the right to enter upon the lands to collect the leaves to utilise as manure or for collecting wood for domestic or agricultural purposes and nothing more. This limited privilege or right, if had to be acquired, had to be evaluated and paid for, consequently the acquisition notifications covering these lands would be an equivocal act and cannot be treated to be acknowledging the full proprietary right of privileged jamma bane holders in such lands. It is axiomatic that a full proprietary ownership of land would entitle the owner to be the proprietor of all the sub-soil rights upto the centre of the earth, all surface rights on the land, all the rights in the usufruct of the land, full rights in all the trees standing on the land save except reserve trees and he would be owner of the air-column upto the sky over that land.

Such types of rights were never made available to the privileged or unprivileged Jamma Bane land holder during the time of Britishers after 1834 who administered Coorg nor during the time from 1899 when Coorg Regulation held the field and also never thereafter when 1964 Karnataka Act was enacted.

22. Now the stage is reached for us to have a stock of the situation. The aforesaid discussion regarding the rights of the Bane land holders in the back-ground of the relevant periods during which the Bane tenure existed in erstwhile Coorg State and thereafter leads us to the following conclusions:

(i) So long as Jamma Bane land owner occupied the Bane land as an adjunct of the warg land to which it remained attached, he had a limited interest or right in the said Jamma Bane land, namely, to enjoy the privilege of non-payment or revenue, privilege of grazing his cattle in the land, privilege of taking leaf manure from the leaves of the trees standing on the land for the purpose of supplying it as a manure to its warg land, privilege of taking fire wood and timber fire wood and timber required for his agricultural and domestic purposes.

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NC: 2024:KHC:29383 AND 1 OTHER

(ii) Such privileges enjoyed by the Jamma Bane holder do not entitle him to any sub-soil rights in the Jamma Bane land nor had he any interest of right in the standing trees and he could not utilise these trees for commercial purpose without payment of full timber value to the Government. He was also not the owner of the air column above the surface of the land. If the holder of a privileged Bane land sought to alienate his land he had to follow the procedure laid down by Rule 167 of Coorg Land Regulation 1899, which held the field prior to 1964 and if that was not done, the holder of privileged Jamma Bane land becomes liable to be summarily evicted as per Section 45 of the Coorg Land Regulation 1899, during the time when the said Regulation held the field.

iii) Once such Jamma Bane land ceases to be a Jamma Bane, whether privileged or unprivileged and became an alienated Bane, on the Jamma Bane being detached from the service of the Warg land under the orders of the authorities passed under Rule 136 of the Coorg Rules, the holder of such alienated Bane becomes entitled to cultivate the Bane land as a separate holding on payment of full assessment and his rights and obligations qua such land became that of an occupant of an unalienated fully assessed lands and he became entitled to all the rights and subject to all obligations of holder of such land governed by the provisions of Coorg Regulation of 1899, in the first instance, and later under the Karnataka Land Revenue Act, 1964.

iv) Even if a Jamma Bane holder got his Bane land detached from the warg land by voluntarily putting the land under cultivation of coffee or any other crop, and got it fully assessed and paid such assessment, even if he had not obtained orders of the authorities under Rule 136 of the Coorg Land Revenue Rules, the Bane land held by him had to be treated as alienated Bane and all that he had to

pay to the Government was full assessment as well as penal assessment if any that could be imposed on him and full timber value as laid down by Rule 136(5) of the Rules framed under the Coorg Land Revenue Regulation, 1899, and the alienated Bane held by him was not liable to be forfeited to the Government.

ANSWERS

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NC: 2024:KHC:29383 AND 1 OTHER In view of the aforesaid conclusion to which we have reached, it becomes obvious that the Point No. 1 will have to be answered in the negative by holding that holders of Jamma Bane lands both privileged and unprivileged are not full owners thereof but have limited privileges qua these lands as indicated above, subject to the rider that once these Jama Bane Lands became alienated Bane, the holders of such alienated Bane became entitled to the rights and obligations of occupants of unalienated fully assessed lands and were governed for that purpose by the provisions of the Coorg Land and Revenue Regulations so long as they held the field and thereafter they were entitled to the rights and subject to the obligations of the holder and occupant of unalienated fully assessed lands as per the Karnataka Land Revenue Act, 1964. 9.19. Relying on the above, she submits that the Court has committed an error by holding that the Jamma Bane lands are government lands, but no such claim has been made regarding Sagu Bane lands.

9.20. Rule 164 of the CLRR read with Section 45 and 143(f) and 145(xv) prohibits partition and alienation of privileged land by way of sale, gift, mortgage or release without permission of the Chief Commissioner. The said provisions are reproduced hereunder for easy reference:

45. Summary eviction in case of alienation of certain lands.-Except with the permission of the Assistant

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NC: 2024:KHC:29383 AND 1 OTHER Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands, of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, (and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government.

'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

143 Power to make rules. (f) generally, for carrying out the purposes of this Regulation.] 145 Bar of suits in certain matters. (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been

wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

9.21. On that basis she submits that the distinction between the privileged and unprivileged lands had been done away with in the year 1974, the reference to privileged tenure could only be to those enumerated under Rule 164 of the CLRR. 9.22. She refers to the decision of the Hon'ble Apex Court in the case of Kunnathat Thattehunni

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NC: 2024:KHC:29383 AND 1 OTHER Moopil Nair v. State of Kerala², more particularly paragraphs 7, 8, 9 and 10 thereof which are reproduced hereunder for easy reference:

7. The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional.

For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the Petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on AIR 1961 SC 552 : 1960 INSC 255

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NC: 2024:KHC:29383 AND 1 OTHER everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of

inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution.

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the Petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert.

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NC: 2024:KHC:29383 AND 1 OTHER The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in

Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCR p. 279]. S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pp. 299 and 300 of the Report, the relevant portion of which is in these terms:

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a

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NC: 2024:KHC:29383 AND 1 OTHER discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself". (p. 299 of the Report).

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, Section 4 and Section 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

9. The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(f) of the Constitution, also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5-A is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Article 19(1)(f) of the Constitution. Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed

land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders

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NC: 2024:KHC:29383 AND 1 OTHER may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a landholder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on landholders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment.

10. That the provisions aforesaid of the impugned Act are in their effect confiscatory is clear on their face. Taking the extreme case, the facts of which we have stated in the early part of this judgment, it can be illustrated that the provisions of the Act, without proposing to acquire the privately owned forests in the State of Kerala after satisfying the conditions laid down in Article 31 of the Constitution, have the effect of eliminating the private owners through the machinery of the Act. The petitioner in petition No. 42 of 1958 has been assumed to own 25 thousand acres of forest land. The liability under the Act would thus amount to Rs 50,000 a year, as already demanded from the petitioner on the basis of the provisional assessment under the provisions of Section 5-

A. The petitioner is making an income of Rs 3100 per year out of the forests. Besides, the liability of Rs 50,000 as aforesaid, the petitioner has to pay a levy of Rs 4000 on the surveyed portions of the said forest. Hence, his liability for taxation in respect of his forest land amounts

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NC: 2024:KHC:29383 AND 1 OTHER to Rs 54,000 whereas his annual income for the time being is only Rs 3100 without making any deductions for expenses of management. Unless the petitioner is very enamoured of the property and of the right to hold it, it may be assumed that he will not be in a position to pay the deficit of about Rs 51,000 every year in respect of the forests in his possession. The legal consequences of his making a default in the payment of the aforesaid sum of money will be that the money will be realised by the coercive processes of law. One can, easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold at public auction. In the absence of a bidder forthcoming to bid for the offset amount, the State ordinarily becomes the auction purchaser for the realisation of the outstanding taxes. It is clear, therefore, that apart from being discriminatory and imposing unreasonable restrictions on holding property, the Act is clearly confiscatory in character and effect. It is not even necessary to tear the veil, as was suggested in the course of the argument, to arrive at the conclusion that the Act has that unconstitutional effect. For these reasons, as also for the reasons for which the provisions of Sections 4 and 7 have been declared to be unconstitutional, in view of the provisions of Article 14 of the Constitution, all these operative sections of the Act, namely 4, 5-A and 7, must be held to offend Article 19(1)(f) of the Constitution also.

9.23. Relying on the above, she submits that both the amendment, the object, and the reasons of the Amendment Act are vague, and do not provide any reasons to bring about legislation to change the situation. The KLR Act preserves the rights, privileges, obligations and liability acquired, accrued or incurred under the CLRR, which can

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NC: 2024:KHC:29383 AND 1 OTHER be seen and gathered from Section 202(1)(b) of the KLR Act which is reproduced hereunder for easy reference:

"202(1)(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law;"

9.24. She refers to a decision of the Division bench of this Court in the case of B. Mohammad v. Deputy Commissioner, Mangalore³, more particularly para 28, 29 and 30 thereof, which are reproduced hereunder for easy reference:

28. Four rules are laid down in Heydon's case [(1584) 3 Co. Rep 7a.] in the matter of Interpretation of statutes. They are:

1. What was the Common law before the making of the Act:

2. What was the defect and mischief for which the Common law did not provide;

3. What remedy the Parliament has resolved and appointed to cure the defect;

4. The true reason of the remedy.

29. These principles have gained acceptance in various judicial pronouncements. The object of Rule 29A has to be understood keeping in mind the abovesaid rules.

(1998) 6 Kant LJ 30

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NC: 2024:KHC:29383 AND 1 OTHER Rule 29a was enacted to prevent a specific mischief noticed by the Legislature. If we follow what is stated in para 72 of Laxmamma's case [1983 (1) K.L.J. 417], then undoubtedly the object of Rule 29A would be defeated. It was never the intention of the rule makers to permit a grantee of a government land to alienate the grant even to the members of the Scheduled Caste/Tribe on and after 17.10.1974. There was no statutory recognition of such right hitherto, and by means of the Rule, such a condition imposed in any grant at the time of the grant was done away with. The legislature was of the view that these grantees are members of the weaker sections of the society; that they are exploited classes; that special statutory protection is needed to safeguard their interest; that land was granted to landless people and if alienation is allowed unchecked, then the object of the very grant would be defeated; that these persons should not be persons without any land even to erect a homestead. Act 2 of 1979 and its precursor Rule 29A were legislated with intention to achieve the above objects. Therefore, any interpretation to be placed to the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interest.

30. Therefore, the opinion of the Bench in respect of the questions framed is as follows:

(1) No; Rule 29A is not deemed to have been obliterated from backdate (retrospectively) in view of Section 4 and 11 of Karnataka Act 2 of 1979.

(2) In view of Rule 29A of the rule referred to supra, clause 12 of the condition referred to above continued to exist as modified.

(3) on and after 17.10.1974 i.e., the date with effect from which date Rule 29A was introduced and till 1.1.1979 the date of coming into force of Act 2 of 1979 referred to above, all transactions were subject to the said Rule 29A.

9.25. She submits that the amendment now made is contrary to both the CLRR and KLR Act. The

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NC: 2024:KHC:29383 AND 1 OTHER CLRR and the KLR Act provide for customary laws of Kodavas in Coorg viz., Section 45, 110, 143 and 145 and Rules 97(2), 135, 136, 164 and 167 of CLRR, which are continued in Section 220, 75(1), 79(2), 80, 100, 202(1)(b) and 202(4) of the KLR Act. Any law cannot violate customary laws. The present impugned amendment, being in violation of customary law, falls foul of Article 245 of the Constitution. Article 245 is reproduced hereunder for easy reference:

245. Extent of laws made by Parliament and by the Legislatures of States (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

9.26. The Jamma land tenure is a quasi-feudal tenure requiring payment of only half the revenue

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NC: 2024:KHC:29383 AND 1 OTHER assessment, and the male family members being required to provide military services in return to the King.

9.27. She submits that this Court in a decision in the case of C.A. Nanjappa -v- C.M. Thimaya⁴ has categorically held that Coorgis are governed by the Mitakshara School of Hindu law as modified by Coorg customary law, thereby accepting the existence of Coorg customary laws which would override and/or modify the Mitakshara law. 9.28. She reiterates that the Coorg customary law prohibits partition, alienation and/or division of the family, and in this regard, she relies on Section 107 of Maj.Gen.Rob Cole's 'A Manual of Coorg Civil Law' ['Cole's Manual' for short] which is reproduced hereunder for easy reference:

1963 Mys. LJ 487

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NC: 2024:KHC:29383 AND 1 OTHER

107. Some have claimed that all such coffee estates, however, acquired, should belong to the house, or the member to leave the house and live separately; but the former is opposed to usage and the long established custom of self-acquiring property, and the latter would be tantamount to a division of family which is prohibited.

9.29. She submits that the division of property would tantamount to the division of the family itself.

In this regard, she relies on Sections 189 and 192 of Rob Cole's Manual which are reproduced hereunder for easy reference:

189. What Constitutes division-A member is not to be considered as divided off from the family on the simple execution of a deed or list of partition or on his merely living apart; but he must have taken his share and lived apart.

192. Although the residence and partaking of food may be separate, the family may still be united. The marriages, celebration of the Huti and other feasts, the performance of the funeral rites and must occur in the chief house or family residence if the family be one and undivided. If division has taken place such ceremonies are performed by the divided member in his own residence; and he also selects a separate burial ground. The mode of performing the above ceremonies will therefore be a guide as to whether a family is divided or not.

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NC: 2024:KHC:29383 AND 1 OTHER 9.30. She submits that division of property is not recognized among Kodava/Coorg race. In this regard she relies on the Rob Cole's Manual. By relying on Sections 105 and 211 of Cole's Manual she submits that the Coorgis zealously guarded the right to ancestral property and continued the family name of the Patedara clan. Sections 105, 115 and 211, are reproduced hereunder for easy reference:

105. Mode of acquiring self-property- The mode laid down to be followed in acquiring self-property is worth enquiring into, and will show how jealously the Coorgs have guarded the rights of ancestral property and the law of primogeniture. At the time of ploughing and sowing and of harvesting, all the members of the family are bound to devote their whole time to the ancestral property. At the other seasons the Kikkaruru are only bound to give half the day, morning or afternoon, to the work of the house, and spend the other half as they like.

During such leisure hours, if they cultivate pepper, ginger, turmeric, oranges, plantain etc, and from the profits purchase cattle, pigs, fowl etc, such property is considered self-acquired. If such cultivation be carried on lands belonging to the house, one-tenth of the produce or value thereof has to be given to the house. If one other lands, the whole goes to the Kikkaruru.

115. Alienation not allowed-Division of property is not recognised among Coorgs, and no one can alienate any property landed or personal without the consent of all the members of the family. A father cannot alienate

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NC: 2024:KHC:29383 AND 1 OTHER landed property, whether ancestral or self acquired, without the consent of his sons grandsons"

211. Daughters- The unmarried daughter takes precedence. If there be more than one married daughter, any one may be selected, and a marriage by Mukka purje be adopted, and here descendants would bear the ancestral name and not that of the father. The property cannot be divided amongst the unmarried daughters. This shows how tenacious the Coorg are of the idea of continuing the family name. In the event of all the daughter being married, a son of any of them may be selected to be adopted into and to represent the family becoming extinct. In the event of the absence of those relations whose action in the matter is necessary, the more distant kindred, or the villagers in their absence, may authorise such marriage and adoptions 9.31. Due to the tyrannical rule of Raja Chikkaveera Rajendra, Coorgis turned to the British, who had assured them that the civil and religious rights of the Coorgis shall be respected. Thus, she submits that even the British having recognized the civil and religious usage of the Kodavas, never interfered with the practice thereof, the amendment now made will cause disruption in the civil and religious usages of the Kodavas.

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NC: 2024:KHC:29383 AND 1 OTHER 9.32. She refers to a Book by the name, Kodavas-a Pictorial by B.D. Ganapathy and by referring to page 12, 16, 18, 20, 24, 62 and 82 again reiterates that a Jamma Bane land belongs to a family, has an Aiyne mane, a Kaimada and a Thutengala and all the family members gather on auspicious and inauspicious occasions to offer their prayers.

9.33. The fragmentation of the land on account of partition would also result in commercialization of the land which would lead to the denudation of trees, and the construction of irregular and unauthorized buildings. Thus, she submits that this amendment would act contrary to the requirement of maintaining the ecologically sensitive variation in a proper manner. She submits that this is the reason why there have been landslides in the recent past in the district of Coorg.

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NC: 2024:KHC:29383 AND 1 OTHER 9.34. The custom of Coorg requires to be protected and in this regard she refers to the treatises by Salmond Jurisprudence and submits that the power of customary law is equal to that of statutory law and a custom may not only supplement but also derogate statutory law. On this ground, she submits that the customs which have been practiced by the Kodavas cannot be undone by the impugned amendment. The Kodavas would be entitled to act contrary to the statutory law by following their customs.

9.35. She refers to Article 13 of the Constitution of India which is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (2)The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3)In this article, unless the context otherwise requires-

(a)"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b)"laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4)Nothing in this article shall apply to any amendment of this Constitution made under article 368. 9.36. By referring to clause (2) of Article 13 of the Constitution of India she submits that the State shall not make any law which takes away the rights conferred by Part-III and by referring to clause 3(a) of Article 13 she submits that law includes customs and usage in the territory of India. Thus, she submits that the customs and traditions have the same value as a statutory law in force. There is a restriction/embargo on the State to enact any law contrary to

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NC: 2024:KHC:29383 AND 1 OTHER customary traditions, and even if there is a law enacted, the customs and traditions would prevail over such statutory law.

9.37. The customary law of Kodavas restricts them from alienating the joint family property, there is no individual right for any member of the family in the joint family property. The restriction imposed on such members for alienation is not an absolute restraint inasmuch as a member wishes to sell his share in the property, which has not been delineated, can do so in favour of other members of the joint family, thereby preserving the joint family of the Kodavas. In this regard she relies upon the decision of the Apex Court in the case of Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies

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NC: 2024:KHC:29383 AND 1 OTHER (Urban)5, more particularly para 25, 37, 38, 39, 40, 41, 42 and 44 which are reproduced hereunder for easy reference:

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our

Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Acts prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their bye-laws restricting membership based on their own criteria.

37. In our view, the High Court made a wrong approach to the question of whether a bye-law like Bye-law 7 could 2005 (5) SCC 632 : 2005 INSC 208

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NC: 2024:KHC:29383 AND 1 OTHER be ignored by a member and whether the authorities under the Act and the Court could ignore the same on the basis that it is opposed to public policy being against the constitutional scheme of equality or non-discrimination relating to employment, vocation and such. So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye-law or for interdicting the formation of cooperative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in Gherulal Parakh v. Mahadeodas Maiya [1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it

was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.

39. The appellant Society was formed with the object of providing housing to the members of the Parsi community, a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the cooperative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire

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NC: 2024:KHC:29383 AND 1 OTHER to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognised by the Acts enacted in that behalf concerning the cooperative movement. Even today, we have women's cooperative societies, we have cooperative societies of handicapped persons, we have cooperative societies of labourers and agricultural workers. We have cooperative societies of religious groups who believe in vegetarianism and abhor non-vegetarian food. It will be impermissible, so long as the law stands as it is, to thrust upon the society of those believing in say, vegetarianism, persons who are regular consumers of non-vegetarian food. Maybe, in view of the developments that have taken place in our society and in the context of the constitutional scheme, it is time to legislate or bring about changes in Cooperative Societies Acts regarding the formation of societies based on such a thinking or concept. But that cannot make the formation of a society like the appellant Society or the qualification fixed for membership therein, opposed to public policy or enable the authorities under the Act to intervene and dictate to the society to change its fundamental character.

40. Another ground relied on by the authorities under the Act and the High Court to direct the acceptance of Respondent 3 as a member in the Society is that the bye- law confining membership to a person belonging to the Parsi community and the insistence on Respondent 2 selling the building or the flats therein only to members of the Parsi community who alone are qualified to be members of the Society, would amount to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act. Section 10 of the Transfer of Property Act cannot have any application to transfer of membership. Transfer of membership is regulated by the bye-laws. The bye-laws in that regard are not in challenge and cannot effectively be challenged in view of what we have held above. Section 30 of the Act itself places restriction in that regard. There is no plea of invalidity attached to that provision. Hence, the restriction in that regard cannot be invalidated or ignored by reference to Section 10 of the Transfer of Property Act.

41. Section 10 of the Transfer of Property Act relieves a transferee of immovable property from an absolute

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NC: 2024:KHC:29383 AND 1 OTHER restraint placed on his right to deal with the property in his capacity as an owner thereof. As per Section 10, a condition restraining alienation would be void. The section applies to a case where property is transferred subject to a condition or limitation absolutely restraining the transferee from parting with his interest in the property. For making such a condition invalid, the restraint must be an absolute restraint. It must be a restraint imposed while the property is being transferred to the transferee. Here, Respondent 2 became a member of the Society on the death of his father. He subscribed to the bye-laws. He accepted Section 30 of the Act and the other restrictions placed on a member. Respondent 2 was qualified to be a member in terms of the bye-laws. His father was also a member of the Society. The allotment of the property was made to Respondent 2 in his capacity as a member. There was really no transfer of property to Respondent 2. He inherited it with the limitations thereon placed by Section 31 of the Act and the bye-laws. His right to become a member depended on his possessing the qualification to become one as per the bye-laws of the Society. He possessed that qualification. The bye-laws provide that he should have the prior consent of the Society for transferring the property or his membership to a person qualified to be a member of the Society. These are restrictions in the interests of the Society and its members and consistent with the object with which the Society was formed. He cannot question that restriction. It is also not possible to say that such a restriction amounts to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act.

42. The restriction, if any, is a self-imposed restriction. It is a restriction in a compact to which the father of Respondent 2 was a party and to which Respondent 2 voluntarily became a party. It is difficult to postulate that such a qualified freedom to transfer a property accepted by a person voluntarily, would attract Section 10 of the Act. Moreover, it is not as if it is an absolute restraint on alienation. Respondent 2 has the right to transfer the property to a person who is qualified to be a member of the Society as per its bye-laws. At best, it is a partial restraint on alienation. Such partial restraints are valid if imposed in a family settlement, partition or compromise of disputed claims. This is clear from the decision of the Privy Council in Mohd. Raza v. Abbas Bandi Bibi [(1932) 59 IA 236 : AIR 1932 PC 158] and also from the decision of the Supreme Court in Gummanna Shetty v.

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NC: 2024:KHC:29383 AND 1 OTHER Nagaveniamma [(1967) 3 SCR 932 : AIR 1967 SC 1595] . So, when a person accepts membership in a cooperative society by submitting himself to its bye-laws and secures an allotment of a plot of land or a building in terms of the bye-laws and places on himself a qualified restriction in his right to transfer the property by stipulating that the same would be transferred back to the society or with the prior consent of the society to a person qualified to be a member of the society, it cannot be held to be an absolute restraint on alienation offending Section 10 of the Transfer of Property Act. He has placed that restriction on himself in the interests of the collective body, the society. He has voluntarily submerged his rights in that of the society.

44. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by Respondent 2 only in terms of the bye-laws of the Society and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its bye-laws. The direction given by the authority to the appellant to admit Respondent 3 as a member is set aside. Respondent 3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by Respondent 2 in disregard of the bye-laws of the Society and without the prior consent of the Society.

9.38. She also relies upon a decision in The Kerala Education Bill, 1957. vs Unknown6, more particularly paras 15, 19, 20, 21 and 41, which are reproduced hereunder for easy reference:

15. The true meaning, scope and effect of Art. 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of Chiranjit Lal Chowdhuri v. The Union of India and others ([1950] S.C.R. 869). In Budhan Choudhry v. The State of AIR 1958 SC 956 : 1958 INSC 64

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NC: 2024:KHC:29383 AND 1 OTHER Bihar a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that Article. Recently in the case of Ram Krishna Dalmia and others v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279), the position was reviewed at length by this Court by its judgment delivered on March 28, 1958, and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of Mohd. Hanif Quareshi v. The State of Bihar ([1959] S.C.R. 629), in the following words :-

"The meaning, scope and effect of Art. 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjit Lal Chowdhury v. The Union of India ([1950] S.C.R. 869) and ending with the recent case of Ram Krishna Dalmia v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279). It is now well-established that while Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the

burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may continue its restrictions to those cases where the need is deemed

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NC: 2024:KHC:29383 AND 1 OTHER to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In the judgment of this Court in Ram Krishna Dalmia's case ([1959] S.C.R. 279) the statutes that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion and, indeed, no attempt has been made in, that behalf by learned counsel. We, therefore, proceed to examine the impugned provisions in the light of the aforesaid principles enunciated by this Court.

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in Biswambar Singh v. The State of Orissa ([1954] S.C.R. 842, 855) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under clause 3(2) can be exercised only "for the purpose of providing facilities for general education, special education and for the training of teachers". It is "for the purpose of providing such facilities" that the

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NC: 2024:KHC:29383 AND 1 OTHER three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose. It is true that the word "may" has been used in sub-clause (3), but, according to the well known rule of construction of statutes, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the Government will be under an obligation to exercise its discretion in furtherance of such purpose and no question of the arbitrary exercise of discretion can arise. [Compare Julius v. Lord Bishop of Oxford ([1880] 5 app. Cas 214)]. If in actual fact any discrimination is made by the Government then such discrimination will be in violation of the policy and principle deducible from the said Bill itself and the court will then strike down not the provisions of the Bill but the discriminatory act of the Government. Passing on to clause 14, we find that the power conferred thereby on the Government is to be exercised only if it appears to the Government that the manager of any aided school has neglected to perform the duties imposed on him and that the exercise of the power is necessary in public interest. Here again the principle is indicated and no arbitrary or unguided power has been delegated to the Government. Likewise the power, under clause 15(1) can be exercised only if the Government is satisfied that it is necessary to exercise it for "standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing the education of any category under their direct control" and above all the exercise of the power is necessary "in the public interest". Whether the purposes are good or bad is a question of State policy with the merit of which we are not concerned in the present discussion. All that we are now endeavouring to point out is that the clause under consideration does lay down a policy for the

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NC: 2024:KHC:29383 AND 1 OTHER guidance of the Government in the matter of the exercise of the very wide power conferred on it by that clause. The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly - a proviso which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to clause 36. The power given to the Government by clause 36 to make rules is expressly stated to be exercised "for the purpose of carrying into effect the provisions of this Act". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under clause 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective. If no amendments are made the rules come into operation after the period of 14 days

expires. Even in this latter event the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. Learned counsel appearing for the State of Kerala submitted in picturesque language that here was what could be properly said to be legislation at two stages and the measure that will finally emerge consisting of the Bill and the rules with or without amendment will represent the voice of the Legislative Assembly itself and, therefore, it cannot be said that an unguided and uncontrolled power of legislation has been improperly delegated to the Government. Whether in approving the rules laid before it the Legislative Assembly acts as the Legislature of Kerala or acts as the delegate of the Legislature which consists of the Legislative Assembly and the Governor is, in the absence of the standing orders and rules of business of the Kerala Legislative Assembly, more than we can determine. But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including clause 36, the Kerala Legislature has, by clause 15 and clause 37 provided further safeguards. In this connection we must bear in

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NC: 2024:KHC:29383 AND 1 OTHER mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed. For reasons stated above it appears to us that the charge of unconstitutionality of the several clauses which come within the two questions now under consideration founded on Art. 14 cannot be sustained. The position is made even clearer when we consider the question of the validity of clause 15(1) for, apart from the policy and principle deducible from the long title and the preamble of the Bill and from that sub-clause itself, the proviso thereto clearly indicates that the Legislature has not abdicated its function and that while it has conferred on the Government a very wide power for the acquisition of categories of schools it has not only provided that such power can only be exercised for the specific purposes mentioned in the clause itself but has also kept a further and more effective control over the exercise of the power, by requiring that it is to be exercised only if a resolution is passed by the Legislative Assembly authorising the Government to do so. The Bill, in our opinion, comes not within category (iii) mentioned in Ram Krishna Dalmia's case ([1959] S.C.R. 279) as contended by Shri G. S. Pathak but within category

(iv) and if the Government applies the provisions in violation of the policy and principle laid down in the Bill the executive action will come under category (v) but not the Bill and that action will have to be struck down. The result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Art. 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative.

20. Re. Question 2 : Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Art. 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve

the same. It is obvious that a minority

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NC: 2024:KHC:29383 AND 1 OTHER community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

21. As soon as we reach Art. 30(1) learned counsel for the State of Kerala at once poses the question : what is a minority ? That is a term which is not defined in the Constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what ? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union ? The position taken up by the State of Kerala in its statement of case filed herein is as follows:-

"There is yet another aspect of the question that falls for consideration, namely, as to what is a minority under Art. 30(1). The State contends that Christians, a certain section of whom is vociferous in its objection to the Bill on the allegation that it offends Art. 30(1), are not in a minority in the State. It is no doubt true that Christians are not a mathematical majority in the whole State. They constitute about one-fourth of the population; but it does not follow therefrom that they form a minority within the meaning of Art. 30(1). The argument that they do, if pushed to its logical conclusion, would mean that any section of the people forming under fifty per cent. of the population should be classified as a minority and be dealt with as such.

Christians form the second largest community in Kerala State; they form, however, a majority community in certain area of the State. Muslims form the third largest community in the State, about one- seventh of the total population. They also, however, form the majority community in certain other areas of the State. (In I.L.R. (1951) 3 Assam 384, it was held

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NC: 2024:KHC:29383 AND 1 OTHER that persons who are alleged to be a minority must be a minority in the particular region in which the institution involved is situated)."'

The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Art. 29(1) and 30(1) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. A little reflection will at once show that this is not a satisfactory test. Where is the line to be drawn and which is the unit which will have to be taken ? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards ? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality. Thus Anglo-Indians or Christians or Muslims may congregate in one particular suburb of a town or one particular ward of a municipality and they may be in a majority there. According to the argument of learned counsel for the State of Kerala the Anglo-Indians or Christians or Muslims of that locality, taken as a unit, will not be a "minority" within the meaning of the Articles under consideration and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo-Indian or Christian community happen to reside in another suburb of the same town or another ward of the same municipality and their number be less than that of the members of other communities residing there, then those members of the Anglo-Indian or Christian community will be a minority within the meaning of Arts. 29 and 30 and will be entitled to establish and maintain educational institutions of their choice in that locality. Likewise the Tamilians residing in Karolbagh, if they happen to be larger in number than the members of other communities residing in Karolbagh, will not be entitled to establish and maintain a Tamilian school in Karolbagh, whereas the Tamilians residing in, say, Daryaganj where they may be less numerous than the members of other communities residing in Daryaganj will be a minority or section within the meaning of Arts. 29 and 30. Again Bihari labourers residing in the industrial areas in or near Calcutta where they may be the majority in that locality will not be entitled to have the minority rights and those Biharis will have no

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NC: 2024:KHC:29383 AND 1 OTHER educational institution of their choice imparting education in Hindi, although they are numerically a minority if we take the entire city of Calcutta or the State of West Bengal as a unit. Likewise Bengalis residing in a particular ward in a town in Bihar where they may form the majority will not be entitled to conserve their language, script or culture by imparting education in Bengali. These are, no doubt, extreme illustrations, but they serve to bring out the fallacy inherent in the argument on this part of the case advanced by learned counsel for the State of Kerala. Reference has been made to Art. 350A in support of the argument that a local authority may be taken as a unit. The illustration given above will apply to that case also. Further such a construction will necessitate the addition of the words "within their jurisdiction" after the words "minority groups". The last sentence of that Article also appears to run counter to such argument. We need not, however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to

the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo- Indians will certainly be minorities in the State of Kerala. It is admitted that out of the total population of 1,42,00,000 in Kerala there are only 34,00,000 Christians and 25,00,000 Muslims. The Anglo-Indians in the State of Travancore-Cochin before the re- organisation of the States numbered only 11,990 according to the 1951 Census. We may also emphasise that question 2 itself proceeds on the footing that there are minorities in Kerala who are entitled to the rights conferred by Art. 30(1) and, strictly speaking, for answering question 2 we need not enquire as to

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NC: 2024:KHC:29383 AND 1 OTHER what a minority community means or how it is to be ascertained.

41. But then, it was argued that the policy behind Art. 30(1) was to enable minorities to establish and maintain their own institutions, and that that policy would be defeated if the State is not laid under an obligation to accord recognition to them. Let us assume that the question of policy can be gone into, apart from the language of the enactment. But what is the policy behind Art. 30(1) ? As I conceive it, it is that it should not be in the power of the majority in a State to destroy or to impair the rights of the minorities, religious or linguistic. That is a policy which permeates all modern Constitutions, and its purpose is to encourage individuals to preserve and develop their own distinct culture. It is well- known that during the Middle Ages the accepted notion was that Sovereigns were entitled to impose their own religion on their subjects, and those who did not conform to it could be dealt with as traitors. It was this notion that was responsible during the 16th and 17th Centuries for numerous wars between nations and for civil wars in the Continent of Europe, and it was only latterly that it came to be recognised that freedom of religion is not incompatible with good citizenship and loyalty to the State, and that all progressive societies must respect the religious beliefs of their minorities. It is this concept that is embodied in Arts. 25, 26, 29 and 30. Article 25 guarantees to persons the right to freely profess, practice and propagate religion. Article 26 recognises the right of religious denominations to establish and maintain religious and charitable institutions. Article 29(1) protects the rights of sections of citizens to have their own distinct language, script or culture. Article 30(1) belongs to the same category as Arts. 25, 26 and 29, and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minorities should have the right to live, and

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NC: 2024:KHC:29383 AND 1 OTHER should be allowed by the State to live, their own cultural life as regards religion or language. That is the true scope of the right conferred under Art. 30(1), and the obligation of the State in relation thereto is purely negative. It cannot prohibit the establishment of such institutions, and it should not interfere with the administration of such institutions by the

minorities. That right is not, as I have already pointed out, infringed by Clause (20). The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Art. 30(1). The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the State various obligations in relation to the minorities apart from what is involved in Art. 30(1). Thus, Art. 30(2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up :

- (1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities, religious or linguistic.
- (2) The State is under a negative obligation as regards those institutions, not to prohibit their

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NC: 2024:KHC:29383 AND 1 OTHER establishment or to interfere with their administration.

Clause (20) of the Bill violates neither of these two obligations. On the other hand, it is the contention of the minorities that must, if accepted, result in discrimination by the State. While recognised institutions of the majority communities will be subject to clause (20), similar institutions of minority communities falling within Art. 30(1) will not be subject to it. The former cannot collect fees, while the latter can. This surely is discrimination. It may be stated that learned counsel for the minorities, when pressed with the question that on their contention Art. 45 must become a dead letter, answered that the situation could be met by the State paying compensation to the minority institutions to make up for the loss of fees. That serves clearly to reveal that what the minorities fight for is what has not been granted to them under Art. 30(2) of the Constitution, viz., aid to them on the ground of religion or language. In my opinion, there is no justification for putting on Art. 30(1) a construction which would put the minorities in a more favoured position than the majority communities.

9.39. By relying on the above she submits that any action of the State cannot negate the customary law/practice of a citizen and in this case, the customs and traditions practised by the Kodava people.

9.40. She relies upon the decision of the Apex Court in Sardar Syedna Taher Saifuddin Saheb

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NC: 2024:KHC:29383 AND 1 OTHER vs. State of Bombay⁷, more particularly para 59 and 62 and submits Article 25 of the Constitution gives every person a right to achieve his purpose, practice and propagate religion, as such the Kodava race is also required to freely practice the civil and religious usages even if such practice is contrary to the law. Paras 59 & 62 are reproduced hereunder for easy reference:

59. It is admitted, however, in the present case that the Dai as the head of the denomination has vested in him the power, subject to the procedural requirements indicated in the judgment of the Privy Council, to excommunicate such of the members of the community as do not adhere to the basic essentials of the faith and in particular those who repudiate him as the head of the denomination and as a medium through which the community derives spiritual satisfaction or efficiency immediately from the God-head. It might be that if the enactment had confined itself to dealing with excommunication as a punishment for secular offences merely and not as an instrument for the self preservation of a religious denomination the position would have been different and in such an event the question as to whether Articles 25 and 26 would be sufficient to render such legislation unconstitutional might require serious consideration. That is not the position here. The Act is not confined in its AIR 1962 SC 853

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NC: 2024:KHC:29383 AND 1 OTHER operation to the eventualities just now mentioned but even excommunication with a view to the preservation of the identity of the community and to prevent what might be a schism in the denomination is also brought within the mischief of the enactment. It is not possible, in the definition of excommunication which the Act carries, to read down the Act so as to confine excommunication as a punishment of offences which are unrelated to the practice of the religion which do not touch and concern the very existence of the faith of the denomination as such. Such an exclusion cannot be achieved except by rewriting the section.

62. Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his administration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25(1) and rendering the protection illusory.

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NC: 2024:KHC:29383 AND 1 OTHER 9.41. She refers to the decision in DAV College Jalandhar vs. State of Punjab⁸, more particularly para 9, 10 and 18 which are reproduced hereunder for easy reference:

9. Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities have to be determined in relation to the population of the State. On this aspect Das, C.J., in Kerala Education Bill case speaking for the majority thought that there was a fallacy in the suggestion that a minority or section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically, minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject-matter of Item 11 of the State list, subject only to the provisions of Entries 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and AIR 1971 SC 1737 : 1971 INSC 142

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NC: 2024:KHC:29383 AND 1 OTHER consequently the minority must be determined by reference to the entire population of that State.

10. It is undisputed, and it was also conceded by the State of Punjab, that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was however contested. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that that language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1).

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha -- in Hindi language and Devnagri character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi or Sanskrit. The belief is that the name of the script

Devnagri is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

9.42. She refers to the decision in Virendra Nath Gupta and others vs Delhi Administration

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NC: 2024:KHC:29383 AND 1 OTHER and others⁹, more particularly para 7, which is reproduced hereunder for easy reference:

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers 1990 SCC (L&S)

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NC: 2024:KHC:29383 AND 1 OTHER with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See In re the Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] ; Ahmedabad St. Xavers College Society v. State of Gujarat [(1974) 1 SCC 717 : (1975) 1 SCR 173] ; Lilly Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134 : (1979) 1 SCR 820] ; Frank Anthony Public School Employees' Association v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35] ; Y. Theclamma v.

Union of India [(1987) 2 SCC 516] ; All Bihar Christian Schools Association v. State of Bihar [(1988) 1 SCC 206] . Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

9.43. She refers to the decision in Jagdev Singh Sidhanti v. Pratap Singh Daulta¹⁰ , more particularly para 26 thereof, which is reproduced hereunder for easy reference:

AIR 1965 SC 183 : 1964 INSC 33

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NC: 2024:KHC:29383 AND 1 OTHER

26. It is in the light of these principles, the correctness of the findings of the High Court that Sidhanti was guilty of the corrupt practice of appealing for votes on the ground of his language and of asking the voters to refrain from voting for Daulta on the ground of the language of Daulta may be examined. The petition filed by Daulta on this part of the case was vague. In para 11 of his petition it was averred that Sidhanti and his agents made a systematic appeal to the audience to vote for Sidhanti and refrain from voting for Daulta "on the ground of religion and language", and in para -12 it was averred that in the public meetings held to further the prospects of Sidhanti in the election, Sidhanti and his agents had made systematic appeals to the electorate to vote for him and refrain from voting for Daulta "on the ground of his religion and language". A bare perusal of the particulars of the corrupt practice so set out in paras 11 and 12 are to be found in Schedules. 'C' and 'D' clearly shows that it was the case of Daulta that Sidhanti had said that if the electorate wanted to protect their language they should vote for the Haryana Lok Samiti candidate.

Similar exhortations are said to have been made by the other speakers at the various meetings. It is stated in Schedule 'D' that resolutions were passed at the meetings urging upon the Government to "abolish Punjabi from Haryana", that many speakers said that the Haryana Lok Samiti will fight for Hindi for Haryana and that they were opposed to the teaching of Punjabi in Haryana. These exhortations to the electorate to induce the Government to change their language policy or that a political party will agitate for the protection of the language spoken by the residents of the Haryana area do not fall within the corrupt practices of appealing for votes on the ground of language of the candidate or to refrain from voting on the ground of language of the contesting candidate.

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NC: 2024:KHC:29383 AND 1 OTHER 9.44. By relying on the above Judgments, she submits that the fundamental duties not only apply to the citizens but also to the State inasmuch as in terms of Article 51-A(f), there is a duty cast on the state to preserve the rich heritage of composite culture. The State by way of impugned amendment has done away with the culture of Kodavas thereby violating Article 51-A(f), which is reproduced hereunder for easy reference:

51-A. Fundamental duties -

(f): to value and preserve the rich heritage of our composite culture;

9.45. She submits that the claim of the State that Jamma Bane lands are government lands are completely false inasmuch as the Bane lands of Coorg were never the properties of the British government nor of the Rajas. The Banes continued to be under private ownership of the

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NC: 2024:KHC:29383 AND 1 OTHER joint family, the British, never being the owner, had not handed over the bane land to the Indian government after the independence. The government lands under the CLRR were called paisari land. Jamma Bane land having a distinct name, not being a paisari land, is not a government land. Under Article 294(b) there is an obligation on the State to preserve the customs and traditions of the Kodavas which is reproduced hereunder for easy reference:

294(b): all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, 9.46. By referring to Section 6 of the Karnataka General Clauses Act, 1899, she submits that repeal of any enactment will not affect any rights, privileges or obligations acquired, accrued or incurred under any enactment so

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NC: 2024:KHC:29383 AND 1 OTHER repealed. Thus, she submits that the repeal of CLRR will not take away the rights invested with the Kodavas. Section 6 of the Karnataka General Clauses Act, 1899 is reproduced hereunder for easy reference:

6. Effect of repeal.- Where this Act or 1 [any Mysore Act or Karnataka Act]1 made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,-

(a) revive anything not in force or existing at the time at which the repel takes effect;
or

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactments so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such, right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

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NC: 2024:KHC:29383 AND 1 OTHER 9.47. She submits that customary law continues to be administered even after the Constitution came into being. In this regard, she refers to a decision in S.N. Rama Shetty & others vs. Kongera T. Appanna¹¹, pages 222 and 223, which are reproduced hereunder for easy reference "Whatever might be the quantity of timber and fire-wood cut by the defendant, it is urged that it was the property of Government and not that of the plaintiff and that therefore the defendant is not liable for damages to the plaintiff. This argument is founded on the character of the holding of what is known as 'bane' land in Coorg. In Appendix 3 'Definitions' given in the Coorg Revenue Manual, 'bane' is described as 'forest land granted for the service of the holding of wet land to which it is allotted, to be, held free of revenue by the cultivator for grazing, and to supply leaf manure, firewood and timber required for the agricultural and domestic purposes of the cultivator, so long as he continues in possession of the wet land.' Such bane may be attached to wet land held under jama tenure, umbli tenure or sagu tenure. The lands held in jama or umbli tenure are not fully assessed and are not alienable while land held under sagu tenure is alienable. Since the bane is granted only for the purpose of making limited use of the forest produce and the holder has no right to cut and remove the timber out of 1959 Mys.LJ 218

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NC: 2024:KHC:29383 AND 1 OTHER the bane land or for purposes other than for the service of the main holding, it is urged that the timber is the property of Government. The Coorg Land and Revenue Regulation 1899 does not define any of the tenures mentioned above and the definition referred to above is not, strictly speaking, a statutory definition. There is nothing in the above Regulation to alter or affect the character of any of the above tenures. We have therefore to see what the character of a bane tenure is as understood by customary law and practice. In Baden-Powell's book on Land Systems in British India, it is stated as follows:-

"The bane.....is destined to supply the warg-holder with grazing, timber, firewood, and herbage which he burns on the rice-fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural and domestic wants of the holder; and if timber, etc., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood..... In the jamma tenure, as the bane is included in the sanad, it is virtually a part of the property. In the sagu tenure, there is no sanad but the attached area of bane must be held and used subject to the same conditions. Under these circumstances, the bane cannot be regarded as actually the property of the tenure holder, nor, on the other hand, as land at the disposal of Government. It is which is held as an appendage to a warg or estate, or to a sagu holding, in a sort of trust, or on condition for a certain use".

In the Note by Sir J. B. Lyall on Tenures in Coorg, printed as Appendix IV in the Coorg Revenue Manual, there is nothing to indicate any difference from what is stated above in regard to the character of a bane holding. It would therefore

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NC: 2024:KHC:29383 AND 1 OTHER appear that bane land held in association with privileged, warg holding like jamma and umbli land is in the possession and dominion of the holders and that though they have no right to cut the timber and dispose it of for purposes other than for the service of the main holding they can do so subject to payment of seignorage and that there is no absolute prohibition to their cutting the timber. In fact, the rules framed in regard to this matter both under the Coorg Land and Revenue Regulation and the Forest Regulation provide for the cutting of the timber by the holder on payment of seignorage for the 'redemption' of the timber and they do not contemplate Government permitting any one other than the holder to cut or remove timber. The seignorage itself represents not the full value of the timber, but a part of the value fixed from time to time presumably with reference to the prevailing rates at the time of the promulgation of the rules. It is also significant to note that in the rules promulgated in 1953, provision is made for extraction and disposal of timber through Government agency and that the holder is entitled to 50 per cent of the net proceeds. The nature of the tenure and the above rules appear to indicate that the holder has at least dominion over the timber and whatever his accountability to Government may be, any third party who interferes with the bane land is accountable to the holder. Therefore, the defendant's contention on this matter has no force.

As regards the rates, the learned Judge has adopted the rates given in the plaint since the rates fetched at the sales held by the Forest Department at Hunsur on 18-2-48 were higher than the rates mentioned in the plaint. The defendant has examined some witnesses to speak to the rates but their evidence is of little value. D. W. 2 Basaviah says that one Baliah has filed a suit against him claiming Rs. 2-4-0 per cubic foot of honne timber. He says nandi was sold at Re. 1 and

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NC: 2024:KHC:29383 AND 1 OTHER rose-wood at Rs. 2-4-0 per cubic foot. He has not maintained any accounts. D. W. 3 Anniah who is in the timber trade speaks about timber sales, a statement of which is contained in a letter dated 23-6-49 (Ex. B-7) addressed to him by the proprietors of Gowri Shankar Mills, Hassan, to whom he says he had supplied timber. Neither his account books nor his customers' account books are produced. The rates in the letter can hardly be taken into consideration as evidence. D.W. 4 Subbaraya Setty speaks to the rates as mentioned in Ex. B-4 which purports to be a statement of account sent by him to the defendant. It is dated 25-1-49. It no doubt mentions the rates at which different varieties of timber were sold. But this witness has not produced his accounts and the rates mentioned in the statement of account contained in the letter can hardly be regarded as evidence. He has also produced Ex. B-8, a communication dated 28-2-48 from the Chief Forest Officer, Coorg. Amongst the varieties of timber mentioned in it, the only relevant variety for which the rate is given is Biti and the rate is Rs. 2-3-0. But the dimensions of the logs are not given. Apart from the evidentiary value to be attached to a communication like this, it is difficult to take the rate into consideration in the absence of details regarding the dimensions of the logs, for the rate would depend on them also. Thus we are left with the rates fetched in the Forest Departmental sale. There is no reason to dispute their correctness or authenticity". 9.48. She relies on a decision in C.A. Nanjappa vs. C.M. Thimmaya¹², more particularly pages 1963 Mys.LJ 486

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NC: 2024:KHC:29383 AND 1 OTHER 487-489 which are reproduced hereunder for easy reference:

"The short point for consideration in this appeal is whether the finding of the learned District Judge that the suit filed by the appellants in a Civil Court is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation, is correct. It is idle for the appellants to contend that the suit is one for readjustment or reallocation of the maintenance provision among the members of the Coorg family and not for a partition of the properties. The parties are Coorgis. They are governed by Mithakshara School of Hindu Law as modified by the Coorg Customary Law. The suit as brought now is clearly one for partition of the suit schedule properties which are admittedly joint family properties. It is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation. The contention of the appellants that the suit as brought by them is not a suit for partition as contended by the respondents but is only a suit for readjustment of the maintenance division effected on 10-10-1923 is an after-thought. We are unable to accept the contention of the learned Counsel for the appellants that once the trial Court allowed the amendment prayed for by the appellants and permitted them to delete the word 'Partition' in paragraph (7) of the plaint and to add the fresh allegations to the effect that the suit is only for increased maintenance, the suit cannot be considered to be one for fresh partition. There is no substance in the said contention. The allegations made by the appellants in the plaint make it abundantly clear that the suit is one for readjustment or reallocation of the properties allotted to the two branches under the deed dated 10-10-1923. Even on the basis that the suit is one for readjustment of the properties the suit is not maintainable. S. 145 of the Coorg Land and Revenue Regulation unmistakably ousts

the jurisdiction of the Civil Courts to entertain such suits. In para 160 of his book "A Manual of Coorg Civil Law" Major General Rob. Cole, Superintendent of Coorg dealing with the question whether a partition of the joint family proper-ties amongst the members of the Coorg family could be effected has stated:

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NC: 2024:KHC:29383 AND 1 OTHER "Partition not allowed-It was not customary among Coorgs to acquire or hold land, houses, &c., separately. Since about 1805 however some families quarrelled and appealed to the former Rajas, who directed that they should in accordance with the Hindu Law be allowed to divide. Subsequent to our assumption of the Government of the country several other families have similarly applied to the Courts and obtained decrees for partition; whilst others have divided off amicably amongst themselves. In 1858 the Thakkas and headmen of the Coorgs represented the loss and ruin occasioned to their ancient houses by this innovation and system of partition; and the Judicial Commissioner in additional Spl. A. S. No. 117 of 1958-59 passed a decree declaring that division was contrary to the ancient custom of Coorg and ever since division has been strictly inter directed."

The learned Counsel for the appellants is not able to point out to us any decision of any Court which has taken a contrary view. S. 145 of the Coorg Land and Revenue Regulation prohibits division of the joint family properties amongst the members of the Coorg family whether it be a partition or other allotment amongst the members of the family. According to the section a suit for allotment of the joint family properties even for purposes of maintenance is excluded from the jurisdiction of a Civil Court. S. 145 of the Coorg Land and Revenue Regulation in so far as it relates for our purpose reads thus:

"145. Bar of suits in certain matters-Except as otherwise pro- vided by this Regulation no suit shall be brought in any Civil Court, in respect of any of the following matters, namely.....

(xv) any claim for the partition of an estate or holding or any question as to the allotment of land when such estate holding or land is one of which the land-

revenue has been wholly or partly assigned or released or which is held as joint family property by persons of the Coorg race or any claim for the distribution of land revenue on partition or any other question connected therewith not being a question as to the partibility of, or the title to, the property of which partition is sought;....."

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NC: 2024:KHC:29383 AND 1 OTHER The above provision is quite clear. It is idle for the appellants to contend that in spite of such a clear provision the jurisdiction of a Civil Court to deal with the allotment of the joint family properties of a Coorg family is within the jurisdiction of a Civil Court.

The learned District Judge, is, therefore, justified in holding that the suit filed by the appellants was not maintainable and dismissing the same."

9.49. Relying on the above judgements she submits that the lands granted by the King under the Jamma Tenure system became the property of the house/family and not of the individual, and any grant made by the King is to be enjoyed by all members of the family. It is the family name that is entered in the SYST records as an abstract owner. In the said records the name of Patedara of the family who is managing the affairs of the family is entered into. The names of all other family members, i.e. maintenance division members, are entered in the 6th column of the Jamma Bandi. Upon computerization, the family name is shown at the head of the list in the 9th column, followed by the name of

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NC: 2024:KHC:29383 AND 1 OTHER Patedara and thereafter, maintenance division holders, and now, after the impugned amendment, a partition deed with a revenue sketch is insisted for entry of the name of any maintenance division holder.

9.50. A Sannad was granted for every holding which would also include a Jamma Bane which was held at half the ordinary assessment by the eldest member of the family.

9.51. By referring to G. Richter's Gazetteer of Coorg, page 252, she submits that since Coorg had no standing army, the Kodavas who rendered military service were not paid any salary whilst on active duty, instead Kodavas were allowed to make use of Jamma Bane land at half assessment. The said extract is hereunder reproduced for easy reference:

"As the Coorg force was not a standing army, it received no pay. Whilst on active duty as

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NC: 2024:KHC:29383 AND 1 OTHER guards or during warfare, the soldiers were maintained at the public expense, and being remarkable for their predatory habits, they largely shared with the Rájahs in the spoil. Without discipline and organization, the Coorgs displayed their strength chiefly behind their stockades and Cadangas. In the open field they rarely faced the attacks of regular troops."

9.52. She submits that the issue in question in Cheekkere's case was as regards the entitlement of the government to the mines and minerals in the subsoil of Bane land. There is no distinction made between the Jamma Bane land or other Bane lands. However, this court singled out Jamma Bane land and held Jamma Bane land to be government land, which is not correct. As aforesaid, she submits that Jamma Bane land was never government land. She further submits that Cheekkere Poovaiah's decision (*supra*) would not apply to the present case since that was one relating to the sub-soil rights, more particularly relating to

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NC: 2024:KHC:29383 AND 1 OTHER minerals in the sub-soil, which vests with the government. If there are no minerals in the land and the land is used for agricultural activities and or customary religious practices of Kodavas, the State cannot have any right on such a land. Thus, even if the decision in Cheekere Poovaiah's case is accepted to be correct, she submits that the decision would only apply in regard to mineral rights in the sub-soil and not as regards rights of ownership by the entire family in Jamma Bane land. 9.53. She refers to the decision in the case of Threesiamma Jacob & others -v- Geologist Department of Mining & Geology & others¹³, more particularly paras 51, 54, 55 and 57 thereof which are reproduced hereunder for easy reference:

2013(7) SCR 863 : 2013 INSC 447

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NC: 2024:KHC:29383 AND 1 OTHER

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium).

Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals - the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as

Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively²⁶ providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines

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NC: 2024:KHC:29383 AND 1 OTHER stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5²⁷ for prohibition or regulation of mining activity in such mineral. Under Section 10²⁸ of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.

9.54. She submits that even after the KLR Act and Rules substituted the CLRR, the rights created under CLRR could not be taken away. Section 202 of the Repeal and Savings clauses of KLR saves all rights, privileges, obligations and liability accrued or incurred, this aspect has not

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NC: 2024:KHC:29383 AND 1 OTHER been considered in Cheekere Poovaiah's case, and there is a mistake committed by treating unalienated Jamma Bane land as government lands or government grants which is not. She submits that Cheekere Poovaiah's case is per incuriam passed in ignorantia and subsilentio arrived at a conclusion. 9.55. On the basis of the above, she submits that the above writ petitions are required to be allowed and the reliefs sought for granted.

10. Sri. Vikram Huilgol, learned Additional Advocate General submits that, 10.1. By referring to the statement of objections, and the Amended Act, he submits that the amendment was enacted with a view to confer certain rights including the assessment of Bane lands in the Coorg district.

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NC: 2024:KHC:29383 AND 1 OTHER 10.2. His submission is that by way of the amendment, certain rights have been conferred on the Kodavas, the amendment is a beneficial legislation which seeks to confer proprietary rights on landholders of Bane land in Kodagu/Coorg. By way of amendment, the persons in possession of Bane land will be registered as 'Occupants' entitling them to full ownership of the said land, bringing about uniformity in the State's land revenue system. 10.3. The State, being of the opinion that the Kodavas were deprived of their full ownership of Jamma Bane land, has sought to confer such full ownership, there are no rights which are being taken away by the State in respect of the said lands and on this basis he submits that no Kodava can be aggrieved by the rights which have been conferred under the Amended Act, and it is for this reason that in the last decade

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NC: 2024:KHC:29383 AND 1 OTHER or so only a few persons like the Petitioners have challenged the amendment, in terms of Sub-section (20) of Section 2 of the KLR Act 10.4. Jamma tenure is originally granted towards military service or semi-military service; under the said tenure, the land was held on payment of half assessment and as a consideration for which military service was required to be rendered to the ruler as and when demanded. Such tenure was in respect of wetlands known as warg measuring 1.5 acres each in which rice was cultivated and the adjoining bane which was forest land considered necessary for grazing, leaf manure, firewood, and timber for agricultural purposes.

10.5. Bane land under the Jamma tenure was free from assessment for upto 10 acres known as 'Privileged Bane', while in respect of wet lands

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NC: 2024:KHC:29383 AND 1 OTHER adjoining the Bane, the tenure holder was to pay half of the assessment. It is in that background, due to there being no requirement to make payment of assessment, Jamma tenure was considered to be a privileged tenure.

10.6. His submission is that there was no restriction as such for alienation, many of the Kodava families had obtained decrees of partition from the then Raja and or the Courts, effected partition and thereafter proceeded to sell their individual extent of land.

10.7. By referring to the publication Religion and Society Among by the Coorg -South India by M.N. Srenivas 1952 edition, he submits that if all adult members of the lineage consented to alienation, the Patedara of the family was required to make an application

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NC: 2024:KHC:29383 AND 1 OTHER before the Revenue Authorities seeking permission to alienate the land, the seller had to pay 5% of the market value of the property as Nazarana to the State which subsequently was enhanced to 20%.

10.8. The land once transferred/alienated, the Jamma property was treated as sagu property and amenable for regular assessment. This practice having been followed, he once again reiterates that there was no prohibition for sale of Jamma Bane land. He also refers to Rules 164-167 of the CLRR and submits that the rules permitted to alienate Jamma Bane land. Rule 164 and 167 reads as under:

164. Jama, Umbli, Bhatamanya and Jaghir lands.- (1) The Assistant Commissioner may permit the alienation of jama, jama umbli, bhatamanya and jaghir lands [also sale, gift, mortgage or release of maintenance shares of such lands in a family patta other than bhatamanya lands in favour of the members of the same family] in the following circumstances, without reference to the Chief Commissioner.-

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NC: 2024:KHC:29383 AND 1 OTHER

- (a) Subletting of wet land for not more than 15 years, with a proportionate part of the attached bane, if desired;
- (b) Mortgage as security for loans advanced by Government under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, as amended by Coorg Act III of 1936;
- (c) Mortgage as security for loans advanced by Co-operative Credit Societies for purposes for which loans might have been made under those Acts;
- (d) Exchange for lands held on privileged tenure or on full assessment on condition that the transaction is to the mutual advantage of the party or parties concerned, the lands exchanged are approximately equal in value and the transfer is ratified by the performance of the ghatti ceremony. In such case, the tenure will change with the ownership;
- (e) Hypothecation for not more than 15 years, of future crops. The mortgagee may be required to give security for the payment of revenue during the currency of the mortgage. (No permission is required for the hypothecation of standing crops);
- (f) The permanent alienation of bhatamanya lands to a Brahmin;
- (g) Sale, gift, mortgage or release of maintenance shares of jama, umbli or jaghir lands in a family patta in favour of the members of the same family, provided that all the adult male members in the family and where there are minors, the guardians, agree to the transaction. (2) If such land is leased without the permission of the Assistant Commissioner, he shall refer the case to the Chief Commissioner for orders. The Chief Commissioner may either..-
- (a) Resume the land and, if he thinks fit, regrant it to the occupier on sagu tenure;

(b) Charge sagu rate for the term of the lease, in which case the privileged rate shall ordinarily be revived on termination of the lease; or

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NC: 2024:KHC:29383 AND 1 OTHER

(c) If the circumstances are unobjectionable, give sanction to the lease, the privileged rate being maintained. (3) If the Chief Commissioner resumes land and regrants it to the occupier under clause (2)(a) above, he may, before the regrant is made, recover land and timber-value under the ordinary provisions of the rules, or a proportion of such value as he thinks reasonable. (4) Lands held on waram tenure (i.e., sublet for short periods on terms of a division of crop between landholder and tenant) will not be deemed to be alienated within the meaning of Section 45 of the Coorg Land and Revenue Regulation.

167. [Privileged wet, bane or hithlu lands. (1) The alienator of privileged wet, ban thithlands shall at the Governments Nazarana, a sum equal to twenty per cent of the market value of the land alienated.] (2) Jaghir banes and hitlus may be cultivated free of assessment without limit, and without the permission of the Assistant Commissioner.

(3) On the hitlus of Yedavanad specified in the Raja's sist accounts, and not alienated by their original grantees or their representatives, cultivation of not more than 10 acres is allowed free of assessment: Provided that the land so cultivated shall be in a compact block. (4) In other respects the provisions of Rules 136 and 139 apply to privileged banes and hitlus. 10.9. His submission is that amendment was introduced taking into account the change in the societal conditions, including the factors such as breakdown of joint family system, mobility of the citizens, disbursal of members

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NC: 2024:KHC:29383 AND 1 OTHER from ancestral land, diverse economic pursuits of the members of the family, employment and or business interests outside the district of Coorg, etc.

10.10. By referring to the Cheekere Poovaiah's case, he submits that the Full Bench of this Court held that both holders of privileged and unprivileged Jamma Bane lands are not full owners but have limited rights, the land belonging to the government. Once Jamma Bane lands are alienated, the holders of such lands are entitled to all rights and are subject to liability of full ownership including full assessment of the land. He submits that the full Bench has recognized the alienation of Jamma Bane land as common place and as such, the consequences of alienation over rights and liabilities of Jamma Bane land have been categorically laid down in the said decision.

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NC: 2024:KHC:29383 AND 1 OTHER 10.11. On account of the Full Bench imposing certain restrictions on holders of Jamma Bane land, the State has now by amending Subsection (2o) of Section 2, done away with such restrictions, introduced a system of registering the holder of Jamma

Bane land as an occupant and thereby conferring full ownership on the said holder without alienation, thus by virtue of the amendment, all holders/occupants of alienated or unalienated as well as unprivileged bane lands including Jamma Bane land, are placed at par. On such registration as an occupant, even the government cannot claim any ownership in the said land and the said land would exclusively belong to the registered owner. He refers to the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Rakesh Kohli¹⁴, more particularly para nos. (2012) 3 SCC 481

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NC: 2024:KHC:29383 AND 1 OTHER 15, 16, 17, 18, and 19 thereof which are reproduced hereunder for easy reference:

15. In our opinion, the High Court was clearly in error in declaring clause (d), Article 45 of Schedule I-A of the 1899 Act which was brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonableness and irrationality.

The High Court failed to keep in mind the well- defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature.

16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. [(1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38) "43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and

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NC: 2024:KHC:29383 AND 1 OTHER two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of

the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

18. Then dealing with the decision of this Court in State of T.N. v. Ananthi Ammal [(1995) 1 SCC 519], a three-Judge Bench in McDowell and Co. [(1996) 3 SCC 709] observed in paras 43 and 44 of the Report as under: (McDowell and Co. case [(1996) 3 SCC 709], SCC p. 739) "43. ... Now, coming to the decision in Ananthi Ammal [(1995) 1 SCC 519], we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation

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NC: 2024:KHC:29383 AND 1 OTHER in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7) '7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.'

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

19. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such

enactment could not have been struck down on the ground that it was arbitrary or irrational.

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NC: 2024:KHC:29383 AND 1 OTHER 10.12. Relying on the above, he submits that a statute enacted by the Central Parliament or State legislature cannot be declared unconstitutional unless there is a flagrant violation of the provisions.

10.13. He relies on the decision of the Hon'ble Apex Court in Ashoka Kumar Thakur v. Union of India¹⁵, more particularly para 219, which is produced hereunder for easy reference:

219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground.

The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India [(1977) 3 SCC 592] said : (SCC p. 660, para 149) (2008) 6 SCC 1 : 2008 INSC 473

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NC: 2024:KHC:29383 AND 1 OTHER "149. ... if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities." Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected.

10.14. By relying on the above, he submits that a law passed by the legislature can only be challenged on constitutionally recognized and available grounds. Customs, traditions, and unreasonableness are not grounds for such a challenge.

10.15. He refers to the decision of the Hon'ble Apex Court in Binoy Viswam v. Union of India¹⁶, more particularly para 83 thereof, which is reproduced hereunder for easy reference:

83. It is, thus, clear that in exercise of power of judicial review, the Indian courts are invested with powers to strike down primary legislation enacted by Parliament or the State Legislatures. However, while undertaking this exercise of judicial review, the same is to be done at three levels. In the first stage, the Court would examine as to whether (2017) 7 SCC 59 : 2017:INSC:478

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NC: 2024:KHC:29383 AND 1 OTHER impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions (substantive judicial review) or it falls foul of the federal distribution of powers (procedural judicial review). If it is not found to be so, no further exercise is needed as challenge would fail. On the other hand, if it is found that legislature lacks competence as the subject legislated was not within the powers assigned in the List in Schedule VII, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution. However, while undertaking substantive judicial review, if it is found that the impugned provision appears to be violative of fundamental rights or other constitutional rights, the Court reaches the second stage of review. At this second phase of enquiry, the Court is supposed to undertake the exercise as to whether the impugned provision can still be saved by reading it down so as to bring it in conformity with the constitutional provisions. If that is not achievable then the enquiry enters the third stage. If the offending portion of the statute is severable, it is severed and the Court strikes down the impugned provision declaring the same as unconstitutional.

10.16. By relying on Binoy Viswam's case he submits that judicial review would require the court to first examine whether the legislation is compatible with the fundamental rights as enshrined in the Constitution or falls foul thereof. If it is not found to be so, no further exercise is to be done. The only other aspect

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NC: 2024:KHC:29383 AND 1 OTHER that could be checked is whether the legislature lacks competence on the subject matter or not. 10.17. In the present case, there is no violation of any fundamental right, nor can it be said that the State legislature lacks competence. Therefore, the challenge made is not sustainable. 10.18. He relies upon the decision of the Hon'ble Apex Court in Jaya Thakur v. Union of India¹⁷, more particularly para 66 and 74, which is reproduced hereunder for easy reference:

66. For considering the issue with regard to validity of the amendments, it will be apposite to refer to some of the judgments of this Court delineating the scope of the judicial review in examining the legislative functions of the legislature.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental

rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while 2023 INSC 606

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NC: 2024:KHC:29383 AND 1 OTHER doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

10.19. Insofar as customs and traditions are concerned, his submission is that the same cannot be a ground to challenge the statute duly enacted by a competent legislature. The legislature has the authority to modify or abolish customs by validly enacting laws. As an example, he submits that there are various customs which are not acceptable in society today, which have also been criminalized, like payment of dowry, child marriage, female infanticide, etc. He relies on the decision in N. Adithayan v. Travancore Devaswom Board¹⁸ reported in para 9 thereof which is reproduced hereunder for easy reference:

9. This Court, in Seshammal v. State of T.N. [(1972) 2 SCC 11 : (1972) 3 SCR 815] again reviewed the principles underlying the protection engrafted in Articles 25 and 26 in the context of a challenge made to 2002(8) SCC 106: 2002 INSC 425

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NC: 2024:KHC:29383 AND 1 OTHER abolition of hereditary right of Archaka, and reiterated the position as hereunder : (SCC p. 21, paras 13-14) "13. This Court in Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] has summarized the position in law as follows (pp. 531 and 532):

"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Mahant Jagannath Ramanuj Das v. State of Orissa [AIR 1954 SC 400 : 1954 SCR 1046] , Venkataramana Devaru v. State of Mysore [AIR 1963 SC 1638 : (1964) 1 SCR 561] , Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion.

The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.'

14. Bearing these principles in mind, we have to approach the controversy in the present case." 10.20. By relying on the above, he submits that no matter how longstanding or deeply rooted a customary usage may be, the same cannot prevail against a legislative enactment. A custom cannot be held out as a source of law or

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NC: 2024:KHC:29383 AND 1 OTHER law itself, contrary to the applicable law. He refers to the decision in Animal Welfare Board of India v. Union of India¹⁹, more particularly para 32, which is reproduced hereunder for easy reference:

32. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court's jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long-lasting tradition goes against the law, the law courts obviously would have to enforce the law. The learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In public interest litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paras 53 and 73 in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547: (2014) 3 SCC (Cri) 136], there is judicial determination about the practice being offensive to the provisions of the Central statute. It would be trite to repeat that provisions of a statute cannot be overridden by a traditional or cultural event. Thus, we accept the argument of the Petitioners that at the relevant point of time when the decision in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136] was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.

(2023) SCC Online 661 : 2023 INSC 548

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NC: 2024:KHC:29383 AND 1 OTHER 10.21. Relying on the above, he once again submits that a legislation cannot be invalidated on the ground that it violates customs.

10.22. He relies on the decision of the Hon'ble Apex Court in Animal Welfare Board of India cases (supra), referring to the above he submits that a statute cannot be overwritten by a traditional or cultural event, even if the same is in conflict with the statute.

10.23. By referring to entry V of List 3 of Schedule-VII he submits that the Parliament as well as the State legislature is authorized to enact laws relating to marriage, acquisition, divorce, succession, joint family, partition, etc. which were earlier governed by customs or personal laws. Entry 5 of List

3 of Schedule-VII is reproduced hereunder for easy reference:

5. Marriage and divorce; infants and minors;

adoption; wills, intestacy and succession; joint

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NC: 2024:KHC:29383 AND 1 OTHER family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

10.24. Insofar as the amendment to Section 80 of the Act of 1964 is concerned, he submits that the requirement of making payment of half the assessment was on the ground that a Kodava could be called for rendering military services at any point of time. In the present circumstances, there is no such forced conscription of Kodavas, any services rendered to the military, be it any branch is voluntary for which necessary payments are made as per the prevalent salary structure.

10.25. The amendment made to Section 80 is in furtherance of the grant of full ownership by way of amending subsection (20) of Section 2; both of them are to be read together. Once full ownership is granted under Subsection (20) of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2, full assessment has to be paid in terms of Section 80. In the event of full ownership not being sought for and the occupant continuing to be a tenure holder the restriction of tenure would continue to apply requiring half assessment to be paid. 10.26. Customs and usages as also traditions cannot be a ground for seeking exemption from payment of tax since levy of tax is a sovereign function of the State made in exercise of sovereign powers in furtherance of a validly enacted legislation. He refers to the decision in K.B. Tea Product Pvt. Ltd. and Another vs. Commercial Tax Officer, Siliguri and Others²⁰, more particularly paras 31 and 32 thereof which are reproduced hereunder for easy reference:

(2023) SCC Online 615 : 2023 INSC 530

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NC: 2024:KHC:29383 AND 1 OTHER

31. The main submission on behalf of the appellants is that as prior to 01.08.2001, the appellants were availing the benefit of sales tax exemption, the said right could not have been taken away by virtue of amendment to Section 2(17) of the Act, 1994 on the ground of legitimate expectation as well as by promissory estoppel. Thus, it is the case on behalf of the appellants that as on 01.08.2001, under the Act, 1994, when Section 2(17) of the Act, 1994 came to be amended, the appellants had a

"vested right" and therefore, the amendment to Section 2(17) of the Act, 1994 shall not affect such "vested right" of exemption from payment of sales tax, which the appellants were availing prior to 01.08.2001.

32. However, it is required to be noted that this is a case of claiming exemption from payment of sales tax. As per the settled position of law, nobody can claim the exemption as a matter of right. The exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the State. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government and it falls within the policy decision and as per the settled position of law, unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision.

10.27. Relying on the above he submits that the court has held that there can be no exemption claimed for tax.

10.28. He submits that the Jamma tenure system is a land tenure system and is not strictly a custom, usage, or tradition and therefore, would not

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NC: 2024:KHC:29383 AND 1 OTHER come within the purview of Article 29 of the constitution. The Jamma land tenure system not being in tune with the social context of today, the State has carried out the necessary amendments to include, by conferring absolute rights and powers to the land holder. No ground under Article 29 has been made out in regard to the challenge in the present case.

10.29. He refers to the decision in Mohd. Hanif Quareshi vs. State of Bihar²¹, more particularly paras 12, 13 and 15 thereof which are reproduced hereunder for easy reference:

12. Before we actually take up and deal with the alleged infraction of the petitioners' fundamental rights, it is necessary to dispose of a preliminary question raised by Pandit Thakurdas Bhargava. It will be recalled that the impugned Acts were made by the States in discharge of the obligations laid on them by Article 48 to endeavour to organise agriculture and animal husbandry and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of certain specified animals. These directive principles, it is true, are not enforceable by any court of law but nevertheless they are fundamental in the AIR 1958 SC 731

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NC: 2024:KHC:29383 AND 1 OTHER governance of the country and it is the duty of the State to give effect to them. These laws having thus been made in discharge of that fundamental obligation imposed on the State, the fundamental rights conferred on the citizens and others by chapter III of the Constitution must be regarded as subordinate to these laws. The directive principles, says learned counsel, are equally, if not more, fundamental and must prevail. We are unable to accept this argument as sound. Article 13(2) expressly says that the State shall not make any law which

takes away or abridges the rights conferred by Chapter III of our Constitution which enshrines the fundamental rights. The directive principles cannot over-ride this categorical restriction imposed; on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of chapter III will be "a mere rope of sand". As this Court has said in the State of Madras v. Smt Champakam Dorairajan [1951 SCC 351 : 1951] SCR 525, 531], "The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights".

13. Coming now to the arguments as to the violation of the petitioners' fundamental rights, it will be convenient to take up first the complaint founded on Article 25(1). That article runs as follows:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

After referring to the provisions of clause (2) which lays down certain exceptions which are not material for our present purpose this Court has, in

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NC: 2024:KHC:29383 AND 1 OTHER Ratilal Panachand Gandhi v. The State of Bombay [(1954) SCR 1055, 1062-1063] explained the meaning and scope of this article thus:

"Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people."

What then, we inquire, are the materials placed before us to substantiate the claim that the sacrifice of a cow is enjoined or sanctioned by Islam? The materials before us are extremely meagre and it is surprising that on a matter of this description the allegations in the petition should be so vague. In the Bihar Petition No. 58 of 1956 are set out the following bald allegations:

"That the petitioners further respectfully submit that the said impugned section also violates the fundamental rights of the petitioners guaranteed under Article 25 of the Constitution in-as-much as on the occasion of their Bakr Id Day, it is the religious

practice of the petitioners' community to sacrifice a cow on the said occasion. The poor members of the community usually sacrifice one cow for every 7 members whereas it would require one sheep or one goat for each member which would entail considerably more expense. As a result of the total ban imposed by the impugned section the petitioners would not even be allowed to make the said sacrifice which is a practice and custom in their religion, enjoined upon them by

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NC: 2024:KHC:29383 AND 1 OTHER the Holy Quran, and practised by all Muslims from time immemorial and recognised as such in India."

The allegations in the other petitions are similar. These are met by an equally bald denial in paragraph 21 of the affidavit in opposition. No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah CVIII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those verses or throwing any light on this problem. We, however, find it laid down in Hamilton's translation of Hedaya Book XLIII at p. 592 that it is the duty of every free Mussulman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. The very fact of an option seems to run counter to the notion of an obligatory duty. It is, however, pointed out that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats. So there may be an economic compulsion although there is no religious compulsion. It is also pointed out that from time immemorial the Indian Mussalmans have been sacrificing cows and this practice, if not enjoined, is certainly sanctioned by their religion and it amounts to their practice of religion protected by Article 25. While the petitioners claim that the sacrifice of a cow is essential, the State denies the obligatory nature of the religious practice. The fact, emphasised by the respondents, cannot be disputed, namely, that

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NC: 2024:KHC:29383 AND 1 OTHER many Mussalmans do not sacrifice a cow on the Bakr Id Day. It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows. We have, however, no material on

the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners.

15. The meaning, scope and effect of Article 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjitlal Chowdhury v. The Union of India [(1950) 1 SCR 869] and ending with the recent case of Ramakrishna Dalmia v. Union of India [CAs Nos. 455-457 and 657-658 of 1957, decided on March 28, 1958] . It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is

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NC: 2024:KHC:29383 AND 1 OTHER that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. We, therefore, proceed to examine the impugned Acts in the light of the principles thus enunciated by this Court. 10.30. By referring to the above, he submits that there is a presumption that any statute or enactment is constitutionally valid, and it would therefore be for the person who challenges the validity of legislation to establish that the same is violative of constitutional principles.

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NC: 2024:KHC:29383 AND 1 OTHER 10.31. He also refers to the decision in Noel Harper vs. Union of India²², more particularly para no. 141 which is reproduced hereunder for easy reference:

141. It was vehemently urged that there is lack of infrastructure at the designated bank and that the bank branch is manned only by 40 odd personnel.

To buttress this plea, reference is made to the observation made by Reserve Bank of India--that voluminous data on foreign remittances will put an extra financial burden on the Bank and increase its costs including divert focus on monitoring of suspicious transactions. This argument does not commend to us at all. In digital banking operations, it is not the head count dispensing physical services that would matter, but the effectiveness of the software is important. We are also not impressed by the plea that for organisations located in remote parts of the country, there would be impediments and for that reason, Section 7 violates test of fairness and reasonableness. In any case, Respondent 3 (SBI) has on affidavit explained as to the extent of measures taken for ensuring efficient servicing of FCRA accounts of all the registered associations/account-holders. Respondent 3 has also assured that if need arises, suitable corrective measures including to upgrade the facilities/services would be taken at its end. Suffice it to observe that the argument under consideration cannot be the basis to doubt the constitutional validity of the provisions in the form of Section 12(1-A) and Section 17(1), as amended vide the Amendment Act. Needless to underscore that Respondent 3 has stated on affidavit before this Court that FCRA accounts opened in its designated branch can be operated online on real- (2022) SCC Online 434

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NC: 2024:KHC:29383 AND 1 OTHER time basis without the need for physical presence of the account-holder or its officials. 10.32. By relying on the above, he submits that mere contention that the implementation of a statute would give rise to a difficulty would not be a valid ground to challenge the same. 10.33. He relies on the Affidavit of the Under Secretary to the Revenue Department, Government of Karnataka, which has been filed stating that in terms of Cheekere Poovaiah's case, the holders of unalienated Jamma Bane lands both privileged and unprivileged were not entitled to the following rights which a fully accessed alienated bane lands would be entitled to:

10.34. The right to use and occupy the land was conditional on the payment of the amount due on account of land revenue for the same;

i. Right to transfer of occupancy rights;

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NC: 2024:KHC:29383 AND 1 OTHER ii. Right to pass on occupancy rights to legal heirs.

10.35. The Under Secretary has categorically stated in the affidavit that by virtue of the impugned amendment the holders of privileged and unprivileged Jamma Bane lands are placed at par with the occupants of unalienated fully assessed lands, thereby being entitled to the aforesaid three rights and also entitled to claim all incidents of occupancy of the said lands. It is stated that a holder could apply to the Revenue Inspector and Tahsildar making an application on that behalf, the Tahsildar would forward a report to the Department of Survey to ascertain possession over the concerned property and verification of the family tree.

10.36. Sri. Vikram Huilgol, on instructions, submits that only a verification of the family tree and

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NC: 2024:KHC:29383 AND 1 OTHER possession is made and that there is no requirement for a partition deed to be executed and or that an 11E sketch be prepared as regards the area falling to the share of the applicant seeking registration of the partition deed. His submission is that if a family tree is provided along with the details of the occupants, possession entry would be made in column No.9 of the RTC. He categorically submits that there is no requirement of a partition deed to be executed nor is the State forcing any Kodava family to execute a partition deed for the purpose of registration of their name into the revenue records. His submission is placed on record.

10.37. Based on all the above, he submits that the above petitions are to be dismissed.

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NC: 2024:KHC:29383 AND 1 OTHER

11. Reply affidavit has been filed by the Petitioners reiterating some of the arguments which have been advanced and it is reiterated that the revenue Officers are seeking for partition deed and a 11-E sketch for making entries into revenue records.

12. Heard Smt. Sarojini Muthanna, learned counsel for the Petitioners and Sri. Vikram Huilgol, learned Additional Advocate General along with Smt. Saritha Kulkarni, learned HCGP for respondents. Perused papers.

13. The points that would arise for consideration are:

1. Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?
2. Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system?
3. Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of

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NC: 2024:KHC:29383 AND 1 OTHER any customary practice, usage or tradition of the Kodava race?

4. Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled?

5. Is the amendment made to Subsection (20) of Section 2 valid or not?
6. Is the amendment to Section 80 of the Karnataka Land Revenue Act valid or not?
7. What is the effect of the impugned amendment?
8. What Order?

14. I answer the above points as under

15. Answer to Point No.1: Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?

15.1. The submission of Smt. Sarojini Muthanna, the learned counsel for the Petitioners is that the impugned amendments which have been

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NC: 2024:KHC:29383 AND 1 OTHER carried out are violative of the customs, usage, and traditions of the Kodava community/race. 15.2. The submission is that the concept of partition is not recognised amongst the persons belonging to the Kodava race, if partition is effected, then, the whole concept of a joint family of Kodavas or the Kodava joint family would be destroyed. The entire land and the properties of a Kodava family are vested in the entire family. There is no distribution of the properties amongst the family members. In view of the amendment, the revenue officers are requesting and/or demanding that a partition deed be provided for the purpose of entry of names of the members of the family as also a sketch showing the entitlement of a member of the family, thus, essentially, forcing a partition in a Kodava family by metes and bounds. The submission is that since this

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NC: 2024:KHC:29383 AND 1 OTHER demand is made for Jamma Bane land, the partition deed would virtually apply to all the properties including the Jamma Bane land thereby constraining the persons belonging to the Kodava race to violate the customs and traditions of the Kodavas.

15.3. In this regard, she submitted that by reference to various sources which have been reproduced hereinabove viz., the Coorg Land Revenue Regulations, 1899 ['CLRR' for short] and authoritative books viz., Major General Rob. Cole, A Manual of Coorg Civil Law, G. Richter's Gazetteer of Coorg, Kodavas-a Pictorial by B.D. Ganapathy, Karnataka State Kodagu District Gazette' by Suryakanth Kamath, Land Systems of British India' by B.H. Baden Powell amongst others.

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NC: 2024:KHC:29383 AND 1 OTHER 15.4. That Kodavas are a patrilineal clan having a family name, which is also called the house name. The house name relates to an 'Aiyne Mane' which is the dwelling house of the family. All the members of the family reside together in the 'Aiyne Mane'. They being engaged in agricultural activities; they own lands called 'Warg land' (wet land). The 'Warg lands' are lands which are attached to a 'Bane'(dry land). The said 'Bane' is further classified as 'Jamma Bane' and 'UmbliBane. All these lands, the dwelling house belonging to the joint family is owned, possessed and enjoyed by all members of the joint family.

15.5. The property earlier stood in the name of the elder of the family known as 'Patedara' with the names of the other members of the family also entered into the revenue records, thus, evidencing right, title and interest of not only

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NC: 2024:KHC:29383 AND 1 OTHER the 'Patedara' but also of all the joint family members.

15.6. The Bane land though not initially belonging to the family, was allotted to the family by the Raja by issuing a 'Sisht' which was so issued for the services to be rendered by the Kodavas in the military campaigns of the Rajas. The Kodavas were part of the reserve army and could be called upon by the Raja to render military service as regards which the Kodavas were entitled to make use of the 'Bane land' without paying any tax as if they were the owners thereof.

15.7. With the passage of time and the advent of coffee plantation, the 'Jamma Bane' land which was to be used for grazing, manuring and certain incidental activities pertaining to agriculture where on an application was

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NC: 2024:KHC:29383 AND 1 OTHER permitted to be made use for activities other than the above viz., cultivation of coffee, once such permission was granted. The 'Jamma Bane' land was treated as alienated Jamma Bane and the land which was not so permitted continued to be unalienated 'Jamma Bane' land, which continued to be attached to the Warg land. These Jamma Bane lands whether alienated or unalienated continued to be in the possession, occupation and enjoyment of the Kodava family and as such, formed the property of the Kodava family.

15.8. In that background, it is contended that the entries having been made of all the members of the family in the revenue records, the property belonging to the entire family with each member of the family being a division holder, by way of the amendment, a partition being forced upon the family, there would be a

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NC: 2024:KHC:29383 AND 1 OTHER requirement to divide the property by metes and bounds for entry of the name of the members of the family into the revenue records since the very concept of a

division holder could be done away with, which confers rights on the entire family.

15.9. The submission of Sri. Vikram Huilgol, learned Additional Advocate General on behalf of the State is that there was no ownership of the property vested with the Kodavas insofar as Jamma Bane land is concerned whether alienated or unalienated. By way of the amendment, the Kodavas or the joint family is granted full ownership right as that of an occupant and as such, a beneficial amendment which acts in favour of the Kodavas. In terms of the amendment, there is no requirement of any partition being effected and/or a survey sketch being produced delineating the property falling

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NC: 2024:KHC:29383 AND 1 OTHER to the share of each of the family members for entry of their name in the revenue records. His further submission is that there is no mandate requiring partition of the property belonging to the Kodava race. The State has not sought to interfere with any of the customs, practices or tradition of the Kodavas. They can either continue to be joint family holders or partition as per their choice. There is no compulsion for a partition by virtue of the impugned amendment. 15.10. It is in that background of the above, I have to answer the points raised.

15.11. It is not in dispute that the Kodavas are a military race and had provided military services to the Raja for a time immemorial. It is also not in dispute that the Raja could call upon the Kodavas to render military services and during the time that such military services was not

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NC: 2024:KHC:29383 AND 1 OTHER rendered, there was no obligation on part of the Raja to make payment of any salary to the Kodavas. It is in that background that the land was granted to the Kodavas by the Raja in the form of Jamma Bane land by issuance of a Sanad permitting the Kodavas to make use of the land along with their Warg land for the purposes of grazing, manuring, etc. Thus, these lands were essentially not one which belonged to Kodavas but belonging to the Raja who by way of a Sanad granted a licence to the Kodavas to make use of the land appurtenant to their own land as regards which no tax was liable to be paid by the Kodavas. The usage of the land as also an exemption from making payment of any tax was on account of the military services required to be rendered by the Kodavas to the Raja as and when called upon. The Jamma Bane land though enured to the

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NC: 2024:KHC:29383 AND 1 OTHER benefit of the Kodava family and could be used, there is no absolute ownership confirmed on the Kodavas by such Sanad or license to make use of the land.

15.12. There can be no dispute in respect of various authoritative texts cited by Smt. Sarojini Muthanna. All those texts only indicate that the Jamma tenure or the bane land are part of the land of Kodavas. The issue in the present matter is not as regards the Jamma tenure or bane land or the

entitlement of the Kodava family to use the Jamma land appurtenant to their land. That right is well recognised and the Kodava family has been held to be entitled to make use of the Jamma land appurtenant to the Warg land. There is also no dispute as regards the payment of land revenue or concession in payment of land revenue since that is not affected by the amendment per se.

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NC: 2024:KHC:29383 AND 1 OTHER 15.13.A Full Bench of this Court in Cheekere Poovaiah's case while dealing with sub-soil rights, more particularly mines and minerals, came to a conclusion that those mines and minerals would belong to the Government and further came to a conclusion that there is no ownership right of the holder in respect of Jamma Bane land either privileged or unprivileged. An exception is however made as regards alienated bane land, in that, if the said land had been alienated under the orders of the authorities passed under Rule 136 of the CLRR, the holder of such alienated bane would become entitled to cultivate the bane land as a separate holding on payment of full assessment being entitled to full rights. In the event of the land not being alienated, then whether privileged or unprivileged, it is only a right of usage which is vested with the occupant.

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NC: 2024:KHC:29383 AND 1 OTHER 15.14.The above being the finding of the Full Bench, it is clear that all sub-soil rights as also right to trees etc., vested with the Government and the occupant had only the right for grazing, manuring, collection of firewood and/or incidental agricultural activities carried out in respect of his/their Warg lands. Insofar as alienated Jamma Bane land, the persons would be a full owner. By way of the amendment, it is seen that even as regards privileged or unprivileged Jamma Bane land, occupancy rights are recognised in terms of the amendment. As a consequence thereof, full assessment is required to be paid in respect of this Jamma Bane land, including unalienated Jamma Bane land as regards which occupancy rights have been recognised under sub-section (20) of Section 2.

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NC: 2024:KHC:29383 AND 1 OTHER 15.15.Insofar as partition or division of the property is concerned, that is a matter which lies in the sole discretion of the family members. If the family members wish to continue as a joint family for all time to come, there is no embargo on doing so. However, the Kodavas are also governed by the Mitakshara law of succession. Each member of the family would be entitled to assert his/her right in respect of the property of the family and there cannot be an embargo imposed by the State on the members of the family not to partition and/or divide the property among themselves.

15.16.The amendment as aforesaid only confers complete ownership rights of the property which is beneficial in nature. The aspect of whether the family members want to carry out a partition or not is left to the wisdom and sole discretion of the family members.

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NC: 2024:KHC:29383 AND 1 OTHER 15.17.The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that the impugned amendment which has been now effected is contrary to the customary practices of the Kodavas. Hence, on that ground she seeks for a declaration that the amendment is unconstitutional. For this purpose, she refers to Article 13 of the Constitution and contends that in terms of Clause (a) of sub-clause (3) of Article 13 of the Constitution, law would include custom or usage and therefore, no amendment could be made to a Statute contrary to the custom or usage. Article 13 of the Constitution is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights.--(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (3) In this article, unless the context otherwise requires,--

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. [(4) Nothing in this article shall apply to any amendment of this Constitution made under article

368.] 15.18.What Article 13 of the Constitution prescribes is that law cannot be inconsistent with or in derogation of the fundamental rights with reference to the law introduced prior to coming into force of the Constitution. Sub-Clause (1) of Article 13 of the Constitution deals with all the laws in force prior to coming into force of the Constitution and mandates that any such law in force in the territory of India inconsistent with the provisions of Part III of the Constitution shall to the extent of inconsistency be void. Therefore, Sub-Article (1) of Article 13 of the

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NC: 2024:KHC:29383 AND 1 OTHER Constitution would apply only in respect of laws already in force and them being inconsistent with Part III. Needless to say, sub-clause (1) of Article 13 of the Constitution would not apply to the present facts and situation. Sub-Clause (2) of Article 13 of the

Constitution mandates that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of sub-clause (2) of the Constitution shall to the extent of the contravention, be void, that is to say, that any new law brought about by the State shall not be in contravention of Part III and if there is any violation of Part-III by any law brought into force, to that extent, the new law would be void.

15.19. Sub-Clause (3) is virtually a definition clause and distinguishes between law and law enforced. Clause (a) of sub-clause (3) of Article

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NC: 2024:KHC:29383 AND 1 OTHER 13 of the Constitution indicates that law would include any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having the force of law. Clause (b) of sub-clause (3) of Article 13 of the Constitution deals with law in force and includes law passed by the Legislature or other competent authorities in the territory of India before the commencement of the Constitution not previously repealed and as such, deals with laws in force as on the date on which the Constitution came into force. Hence, Clause (b) of sub-clause (3) of Article 13 of the Constitution would also not be applicable to the present facts.

15.20. Insofar as Clause (a) of sub-clause (3) of Article 13 of the Constitution as mentioned above, it is virtually a definition clause defining what law would mean and does not indicate that a custom or usage cannot be overridden or

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NC: 2024:KHC:29383 AND 1 OTHER substituted by a law. Reading of Clause (a) of sub-clause (3) with sub-clause (1) and sub-clause (2) of Article 13 of the Constitution would only indicate that any law shall not be inconsistent with or in derogation to Part III of the Constitution. Clause (a) of sub-clause (3) of Article 13 of the Constitution does not in any manner save a custom or usage from any statutory intervention by the Parliament or the Legislature. It only mandates that no custom or usage shall be inconsistent with or in derogation of Part III of the Constitution.

15.21. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General, a law enacted by the Central Parliament or State Legislature cannot be declared unconstitutional unless it is in flagrant violation of the provision of the Constitution. For that purpose, there are several tests that have been laid down in

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NC: 2024:KHC:29383 AND 1 OTHER numerous decisions of the Hon'ble Apex Court. There is no decision that has been placed on record by the Petitioner to indicate that substitution or cancellation of a custom or usage would be a ground to challenge the constitutional validity of a legislation that is contrary to the custom or usage of a particular class of persons.

15.22. As held by the Hon'ble Apex Court in Rakesh Kohli's case (supra) and Ashok Kumar Thakur's case (supra), as to what is required for a statute to be declared as unconstitutional, and the following are to be fulfilled:

- i) It is violative of Article 14 of the Constitution;
- ii) Violative of the constitutional provision;
- iii) The appropriate legislature did not have the competence to make the law;

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NC: 2024:KHC:29383 AND 1 OTHER

- iv) That it violates in particular the fundamental rights enumerated in Part III of the Constitution.
- v) If the statute is so arbitrary or unreasonable that it must be struck down.
- vi) The term 'arbitrary' to be read as 'discriminatory'
- vii) It unreasonably restricts the fundamental rights under Article 19 of the Constitution etc.,

15.23. As held by the Hon'ble Apex Court in Binoy Viswam's case (supra), there is a three step process required to be resorted to by a Court of Law:

- 1) Examine as to whether the impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions or it falls foul of the federal

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NC: 2024:KHC:29383 AND 1 OTHER distribution of powers? If it is not found to be so, no further exercise is needed to be done and the challenge would fail. If it is found that the Legislature lacks competence, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution.

- 2) If the impugned provision is violative of the fundamental rights or other constitutional rights;
- 3) If the first phase of enquiry is against the statute, then in the second phase, the Court would have to undertake the exercise to see if the impugned provision can be saved by reading it down so as to bring it in conformity with the provision of the Constitution, if possible to do so.
- 4) If the second stage is not possible, then in that event if the offending portion of the statute is severable, the court ought to/may strike down such a severed portion, if not, strike down the entire impugned provision as unconstitutional.

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NC: 2024:KHC:29383 AND 1 OTHER 15.24.In the present case, it is not the case of the Petitioner that the State Legislature does not have the power to amend the Karnataka Land Revenue Act. The ground of challenge as indicated above is only as to whether, by way of the amendment, the customs, traditions and usage are infringed. As referred to supra and as detailed out in the aforesaid decisions of the Hon'ble Apex Court, such a ground is not available.

15.25.The Hon'ble Apex Court in the Animal Welfare Board of India's case (supra) has categorically come to a conclusion that a provision or a statute cannot be overridden by a traditional or cultural event. In that matter, the Hon'ble Apex Court was ceased of the challenge to a ban on Jallikattu and came to a conclusion that the practice of Jallikattu was violative of the Prevention of Cruelty to Animals Act, 1960.

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NC: 2024:KHC:29383 AND 1 OTHER This case would be an illustration of a legislation overriding a tradition or a practice resorted to by the general populace 15.26.There are several such enactments which have been brought into force to get rid of social evils. Some of the prominent ones that could be referred to are the Dowry Prohibition Act, Child Marriage Act, Hindu Succession Amendment Act thereto, POCSO Act, etc. All these Legislations in some manner or the other have been brought into force by the Parliament and/or by the State legislature to prohibit or in some cases criminalise certain customs and traditions that have been followed. It is up to the legislature in its wisdom to decide on which custom, practice or tradition is acceptable, being in accordance with the requirement of the Constitution and which are in violation of the fundamental rights enshrined under the Constitution.

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NC: 2024:KHC:29383 AND 1 OTHER 15.27.If any such social, custom, practice or tradition is violative of the fundamental rights enshrined under the Constitution in terms of Clause (a) of Sub-Clause (3) of Article 13 by itself, those customs, traditions and usages would be void. However, the Parliament or the State Legislature can also bring about laws to criminalise such practices and/or prohibit such practices. Such action on part of the Centre or the State cannot be questioned only on the ground that the legislation or the Statute brings about a situation to negate a custom or tradition.

15.28.The contention that the CLRR and KLRA recognise, provide and protect the customary laws of Kodavas is again misconceived. The submission made by Ms. Sarojini Muthanna, learned counsel for the Petitioners that there is a prohibition for alienation of the Jamma Bane

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NC: 2024:KHC:29383 AND 1 OTHER land which forms part of the ancestral land on account of customs and traditions and is protected under CLRR and the subsequent KLRA is not borne out by records.

15.29.A perusal of Section 45 of the CLRR would indicate that even under the CLRR, there is a possibility of permission from the Assistant Commissioner for alienation of the lands and it is only when such permission from the Assistant Commissioner is not obtained that summary eviction in case of alienation without such permission is made can be resorted to. Thus, Section 45 of the CLRR lays down the consequences of alienation without permission of the Assistant Commissioner and does not in any manner impose any restriction or prohibition on alienation.

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NC: 2024:KHC:29383 AND 1 OTHER 15.30.Section 100 of the CLRR also speaks of transfer with the previous sanction of the prescribed authority and does not impose a prohibition on transfer but makes it only conditional upon permission being granted.

15.31.Though the CLRR is recognized by the KLRA and CLRR itself did not recognize any prohibition, the question of the KLRA recognizing any prohibition to support customary laws of the Kodavas would not arise.

15.32.Article 245 of the Constitution of India which has been pressed into service to challenge the constitutional validity of the amendment would also not in my considered opinion apply since the same provides only for powers of the Parliament to make laws for the whole or any part of the territory of India and the legislature of a State to make laws for whole or any part of

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NC: 2024:KHC:29383 AND 1 OTHER the State. The State Legislature having made the impugned laws which have an effect within the State of Karnataka cannot be said to fall foul of Article 245 of the Constitution. 15.33.The decision in Kerala Education Bill, 1957 was one rendered in a situation relating to equality under Article 14 of the Constitution and are relatable to Article 29 and 30 of the Constitution which relates to cultural and educational rights.

15.34.Though the Kodavas could be considered to be a minority not only in the State of Karnataka but across the country, the said provisions could be attracted only if there was any violation of the fundamental rights of the Kodavas made on account of the amendment. Except to contend that there is a violation of the customary laws, there is no other further

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NC: 2024:KHC:29383 AND 1 OTHER ground made out as regards violation of Article 28, 29 and 30 of the Constitution to make them applicable to hold the amendment to be in violation of the Constitution.

15.35.The decision in Sardar Syedna's case also in my considered opinion would not be applicable for the reason that, the decision was relating to a practice to propagate a religion and its religious practices wherein the Head of the Muslim Bohra community was conferred certain rights and powers to excommunicate persons of the community who did not adhere to their directions. This was held to be an essential practice in order to maintain the discipline of the Muslim Bohra community and in that background the practice was upheld by the Hon'ble Apex Court. There is no such question involved in the present matter. Non-alienation of land vested with the family is not one which

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NC: 2024:KHC:29383 AND 1 OTHER is required for the purposes of propagating the Kodava race and neither are the Kodavas recognised as a separate religion in contrast to Hinduism, further, they are also governed by the Mitakshara School of Hindu Law. As observed supra, the various treatises and authoritative texts which have been referred to by Ms. Sarojini Muthanna, learned counsel for the Petitioners themselves envisage the possibility of alienation albeit with prior permission/sanction.

15.36.The reference to Article 51A(f) of the Constitution to contend that there is a duty cast on the State to preserve the rich heritage and composite culture cannot be disputed. Preservation of rich heritage and composite culture would require that such a practice has been recognised and continues to be in force even as of today. In this case, the practice

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NC: 2024:KHC:29383 AND 1 OTHER relates to the non-alienation of a joint family property. As referred to Supra, at the cost of reputation, it is once again reiterated that there was never any prohibition for alienation so long as prior sanction is obtained and this being in the nature of a condition attached to a land tenure cannot be contended to be an essential customary, custom or practice of the Kodava race. Thus, Article 51A(f) of the Constitution also would not be applicable to the present case.

15.37.The submission of Smt. Sarojini Muthanna, learned counsel for the Petitioners, is that the customary law is recognised under the CLRR and as such, the partition of the property and subsequent alienation, if any, made by the person to whom the said portion of the property falls to the share would be violative of Section

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NC: 2024:KHC:29383 AND 1 OTHER 45 of the CLRR, since the property is required to be enjoyed by all members of the family, cannot also be countenanced inasmuch as by the recognition of full occupancy rights in terms of sub-section (20) of Section 2, the entire family would become the owner of the property. The ownership is still not vested with individual members of the family in terms of the amendment.

15.38.Insofar as the further contention of Smt. Sarojini Muthanna that without entry of the name of each of the family members, no loan could be obtained since no guarantees could be issued by the family members is again misconstrued. As afore observed, the property continuing to be in the name of the family, the names of the members of the family would also be added to the revenue records. Their name being present in the revenue records, would

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NC: 2024:KHC:29383 AND 1 OTHER always enable them to apply for and obtain necessary loans from the concerned banks. 15.39.Insofar as there being a prohibition for sale of the property outside the patrilineal clan, the pre-emption rights which are available under Section 4 of the Partition Act, 1893 could be exercised by the members of the patrilineal clan.

15.40.Her submission that until now taxes were exempted on the property and by way of the impugned amendment, taxes are required to be paid cannot be a ground to challenge such statutory amendment. A fiscal aspect of any of act or otherwise cannot be a ground for challenge. Even otherwise, the exemption from making payment of tax which was granted to the Kodavas on account of the military service expected to be rendered by them to the then

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NC: 2024:KHC:29383 AND 1 OTHER Raja and subsequently to the British, there is no such compulsion today for the Kodavas to render military service. Such service today is voluntary and not a forced service as was under

the Raja.

15.41.It would, however, be required for me to recognise and take cognisance of the glorious service rendered by members of the Kodava race to the armed forces. I would also have to commend the members of the Kodava race for having voluntarily rendered such glorious service and protecting the motherland. That does not, however, mean that members of the Kodava race would be forced to serve in the military, in today's time and age, under the Constitution of India, there is no concept of forced conscription recognised in India.

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NC: 2024:KHC:29383 AND 1 OTHER 15.42.The invocation made of Article 13 of the Constitution of India to contend that there is a violation of customary rights, since customs or usage are deemed to be law under Clause (3)(a) of Article 13 of the Constitution of India would also not enure to the benefit of the Petitioners since the reference to Clause (3)(a) of Article 13 of Constitution of India relates to Clause (1) of Article 13 of Constitution of India which speaks of all laws in force in the territory of India and mandates that any law in force which is inconsistent with the Provisions of Part- III shall to that extent of inconsistency be void. Thus, in terms of Clause (1) of Article 13 of the

Constitution of India, any law inconsistent, including customary law or usage would be rendered void. Clause 3(a) would not amount to a restriction or embargo on the State to enact any law contrary to the customs and usage.

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NC: 2024:KHC:29383 AND 1 OTHER 15.43.The decision in Jagdev Singh Sidhanti's case was in relation to elections and malpractice where the candidate had extorted for votes to be granted to him in order to protect a particular language. The same would also have no bearing in the present facts and circumstances.

15.44.A perusal of Rule 164 of the CLRR would make it clear that there is in fact no prohibition for alienation of the Jamma land. The only requirement was that the person seeking for sale was required to approach the Assistant Commissioner. The Assistant Commissioner could grant permission for sale, gift, mortgage or release as contained therein. Thus, it is clear that even under CLRR, there is a possibility of alienation recognised and therefore it cannot be now contended that the customs and traditions

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NC: 2024:KHC:29383 AND 1 OTHER prohibit the alienation of the property belonging to the joint family.

15.45.The decision in C.A. Nanjappa's case is relied upon to contend that in terms of section 145 of the CLRR, the prohibition for partition is not one which can be a ground for challenge of the amendment to sub-section (20) of Section 2 as also the amendment to Section 8o. By virtue of the amendment to sub-section (20) of Section 2, full occupancy rights/full ownership is granted. By virtue of amendment to Section 8o, the assessment/tax is collected. Neither of these two amendments would explicitly or implicitly permit partition. The aspect of partition, if sought for by any member of the family, the same could be contested on the basis of Section 145 of the CLRR or any other grounds which may be available to the parties.

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NC: 2024:KHC:29383 AND 1 OTHER The said ground which has been contended to be the natural consequences of the amendment being made, cannot be accepted, more so, in view of the submission made by the learned Additional Advocate General, and in view of the affidavit filed by the Under Secretary, Revenue Department that there would be no requirement for producing a partition deed or a survey sketch/11-E sketch for the purpose of entry of a member of a family in Column No.9 of the RTC. Thus, without any partition being effected, the names of any family member which has been missed out or which is required to be added on account of birth etc, and any name of a member required to be deleted on account of death etc, can be so done without a partition being effected. Thus, I am of the considered opinion that the impugned amendments do not in any manner offend Section 195 of the CLRR

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NC: 2024:KHC:29383 AND 1 OTHER and there is no mandatory requirement for partition to be effected amongst the Kodava family, post the impugned amendment. 15.46.Insofar as customs and traditions are concerned, the submission made by the learned Additional Advocate General that even during times of the Raja and/or the British rule, a partition could be effected as also properties sold to a third party is sought to be substantiated by reference to a Book 'Religion and Society Among by the Coorg -South India by M.N. Sreenivas' wherein it is stated that the seller could pay 5% of the market value of the property as Nazarana to the State, for such sale, which was subsequently enhanced to 20%. In this regard, even Rule 164 of the CLRR empowered the Assistant Commissioner to permit the alienation of the

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NC: 2024:KHC:29383 AND 1 OTHER jamma, jamma umbli, bhatamanya and jahghir lands by way of sale, gift, mortgage or release of maintenance shares etc. Thus, in my considered opinion, it cannot now be contended that there was always an embargo for a member of a Kodava family to alienate his property to a third party and/or for partition to be effected amongst the members of the Kodava family. Thus, in my opinion, there is no custom, usage or tradition, which can be said to be in existence prohibiting the alienation or partition of the property of a Kodava family. 15.47.The decision of the Hon'ble Apex Court in Adithayan's case and Animal Welfare Board of India's case would in clear and categorically terms establish that it is a legislative enactment which is required to be given effect to, even if, there are customary practices which have been prevalent and accepted for a long period of

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NC: 2024:KHC:29383 AND 1 OTHER time. It is the legislature which is supreme and by way of the legislative enactment where a particular custom is overridden, prohibited or regulated, the same would not be a ground for challenge unless the same is without legislative competence or is violative of the fundamental rights guaranteed under Part-III of the Constitution.

15.48.In the present case, there being no doubt as regards the competence of the legislature, more so, when in terms of Entry 5 of List 3 of Schedule-VII, it is the State which can enact laws relating to marriage, divorce, succession, joint family partition, land laws etc. 15.49.The origin of Jamma Bane land being on account of issuance of a Sanad by the Raja allotting or making available certain land for the use of a member of the Kodava race or a

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NC: 2024:KHC:29383 AND 1 OTHER Kodava family. The land granted by the Raja being the wet land-warg land, there is only a right granted to such Kodava family or a person belonging to the Kodava race to make use of the appurtenant land for the purpose of grazing, manuring and any other agricultural activities. This land being called Jamma Bane land went with the Warg land and

formed a kind of land tenure inasmuch as on account of the right to use this land, the member of Kodava race and/or Kodava family was required to render military service when called upon, and in respect of this land, either tax was not required to be paid or a concession in tax was made available. Subsequently, the Jamma Bane land was classified as privileged and unprivileged. The privileged land being capable of being used for the purpose of growing coffee, which arose with the advent of coffee plantation in the

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NC: 2024:KHC:29383 AND 1 OTHER country, and more particularly in that region. The aspect of privileged and unprivileged land came about on account of changed circumstances and as a modification of the land tenure of Jamma Bane. Subsequently, some of the lands were permitted to be alienated as regards which full assessment was required to be paid and the lands which were not alienated continued to be unalienated entitled to concession in assessment. This classification of alienated land is also a further modification of the land tenure. The Kodava family having established a Kaimada or a temple for ancestors is not a part of the land tenure, nor is demarcation of Thutengalas part of the land tenure. This is only a manner of utilisation of the bane land for such purposes which are non- agricultural in nature, since those lands were not fit for agricultural use, mainly for the reason

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NC: 2024:KHC:29383 AND 1 OTHER that during those times, use of lands for agriculture would only be from wet lands and not dry lands.

15.50. Thus, I answer Point No.1 by holding that neither a Statute nor an amendment to the Statute can be questioned on the basis of the Statute or amendment thereto being violative of customs, usage or traditions. Any challenge to a statute or amendment to a statue can only be made on the basis of the available grounds as indicated above, and as laid down by the Hon'ble Apex Court in several decisions.

16. Answer to Point No.2: Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system? 16.1. Ms. Sarojini Muthanna, learned counsel for the Petitioners has sought to contend that the Jamma Bane lands are incapable of alienation,

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NC: 2024:KHC:29383 AND 1 OTHER there is a prohibition on alienation. If the said land is permitted to be alienated, the entire edifice of the family system of Kodavas would be destroyed. This aspect and contention would have to be examined from the law and documents on record; this has also, to some extent, been considered by me in answer to Point no.1.

16.2. A perusal of the Karnataka State Kodagu District Gazette by Suryakanth Kamath relied upon by the Petitioner would indicate that there was a recommendation made not to permit the Coorgis to sell their property, since that may result in impoverished Coorgis to dispose off the land to Europeans or natives of Mysore from whom a service of the like rendered by Coorgis could not be expected. That is to say that the permission was not denied on the basis of any customary practice but only on the ground of

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NC: 2024:KHC:29383 AND 1 OTHER keeping the Kodavas sub-servient and render military services which they were rendering to the British by granting an exemption of payment of taxes. The lands as could be seen were classified as Sagu land and Jamma land, which classification is made for the purpose of land tenure and imposition of land revenue. 16.3. As could be seen from the reference made by the learned counsel for the Petitioner herself relating to the publication by B.H. Baden Powell in 'Land Systems of British India'. The reference made to Jamma land is as Jamma tenure and reference made to Sagu is as regards Sagu tenure. The Jamma Bane land was not held to belong to the tenure holder but belonged to the Government. The bane land being appurtenant to the Jamma land or the Sagu land were used for incidental purposes. Subsequently, with the introduction of coffee,

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NC: 2024:KHC:29383 AND 1 OTHER when the land was sought to be cleared for growing coffee i.e., when the lands were being disposed to coffee planters and it is in that background, that certain Rules were introduced permitting the Jamma Bane land to be used for coffee cultivation provided no large trees were removed.

16.4. Section 189 of Rob Cole's Manual deals with what constitutes a division and prescribes that a member is not to be considered as divided on the simple execution of a deed but he must have taken a share and lived apart. 16.5. Thus, even as per Rob Cole's manual, a division of family is permitted. In terms of Section 192 of Rob Cole's Manual, if a division has taken place, ceremonies are performed by the divided member in his own residence. This again indicates that division was permissible.

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NC: 2024:KHC:29383 AND 1 OTHER 16.6. From the above, it is seen that the classification of the land is on the basis of the land tenure system and not on the basis of customs or usage of Kodavas as sought to be contended by Ms. Sarojini Muthanna, learned counsel for the Petitioners.

16.7. In that view of the matter, the concomitance of the land tenure system would equally apply to Jamma Bane land and not only the customs and traditions.

16.8. Thus, I answer Point No.2 by holding that non-

alienation of the Jamma Bane land and the said land going along with the Jamma land is a concomitance of the land revenue system and not based on customary practice.

17. Answer to Point No.3: Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of any

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NC: 2024:KHC:29383 AND 1 OTHER customary practice, usage or tradition of the Kodava race?

above, having come to a conclusion that there is no such essential customary practice requiring that alienation of a joint family property is prohibited and having come to a conclusion that the permission which is required to be obtained under the earlier CLRR and now the KLRR by a member of a Kodava family to alienate a property is a condition of land tenure, I am of the considered opinion that by way of the amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, there is no violation of any customary practice, usage or tradition of the Kodava race. 17.2. The decision in Kerala Education Bill, 1957 was one relating to minorities and the definition thereof in terms of Article 25, 26, 29 and 30 of

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NC: 2024:KHC:29383 AND 1 OTHER the Constitution of India with reference to educational institutions and the fees collected therein. The said decision would not in my considered opinion be applicable to the present case. The customs and traditions which were considered in the Kerala Education Bill matter was for the purpose of determination of who is a minority and not otherwise.

17.3. The decision in Virendra Nath Gupta's case also dealt with a linguistic minority institution on the basis of the Article 29 and 30 of the Constitution of India. The same would also have no bearing in the present matter for the same reason mentioned above.

17.4. The concept of privileged and unprivileged tenure is also explained hereinabove. Privileged is when no assessment is required to be paid and unprivileged is one where assessment is

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NC: 2024:KHC:29383 AND 1 OTHER required to be paid for usage by the Kodavas. By way of the amendment, the distinction between privileged and unprivileged has also been removed. The Jamma land which had been alienated earlier continues to be under the ownership of the respective purchaser who if a Kodava or not, would have obtained necessary rights of ownership.

17.5. By way of the amendment, even the unalienated land would now vest in the family as full ownership. Thus, I am of the considered opinion that this is a benefit which is provided to the members of the Kodava race and by virtue of amendment to sub-section (20) of Section 2, full ownership right as an 'Occupant' is granted to the members of the Kodava race and/or the family

owning the Jamma Bane land, privileged or unprivileged. The amendment to sub-section (20) of Section 2 being a beneficial

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NC: 2024:KHC:29383 AND 1 OTHER amendment conferring full ownership rights cannot be said to be in violation of the customs, traditions and/or practices.

17.6. The customs and practices that Smt. Sarojini Muthanna, learned counsel for the Petitioners has contended is as regards to common usage of the land belonging to the family, common ownership of the said land and there being an embargo on partitions being effected among the family members.

17.7. The amendment per se does not in any manner deviate from the above rights. The amendment does not require members of a Kodava family to execute a partition deed and/or produce a survey sketch alienating the partition among the family members. Insofar as this contention is concerned, an affidavit has been filed by the Under Secretary to the Revenue Department

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NC: 2024:KHC:29383 AND 1 OTHER stating that there would be no requirement to produce a partition deed or a survey sketch/11- E sketch for entry of the name of a family member in the revenue records so long as the family tree and/or documents evidencing that the person is belonging to that family is produced, the name of such person would be entered in the revenue records. This would answer the apprehension on part of the Petitioners inasmuch as the Under Secretary, Revenue Department, has categorically stated on oath that no partition deed is required nor is a survey sketch/11-E sketch required to be produced.

17.8. It is only on the basis of requirement to produce the same that it has been contended that the customs, traditions and practices of the Kodavas are violated by the amendment. If there is no requirement to produce partition

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NC: 2024:KHC:29383 AND 1 OTHER deed and/or survey sketch/11-E sketch, the question of any customs or traditions being violated would not arise.

17.9. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General and as per the affidavit of the Under Secretary, Revenue Department, there being no requirement of a partition to be effected and/or survey sketch or a 11-E Sketch being required to be furnished by way of the amendment, the property continues to be that of the joint family , and there would be no division of the property by virtue of the amendment simplicitor. The choice of continuing to be part of the joint family and for the property to be continued as a joint family property is that of the joint family members. The amendment per se does not require any such partition. Thus, there would be no

violation of customary law or Section 45 of

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NC: 2024:KHC:29383 AND 1 OTHER CLRR which is also now part of the Land Revenue Act.

17.10. Insofar as the submission that in the joint family properties, there are Kaimadas [temple for ancestors] and Thutengalas [family graveyard] which are to be enjoyed by all the members of the family. Firstly, as afore observed, there would be no partition by way of the amendment. Secondly, even if the members of the family wish to partition, suitable arrangements could be made insofar as Kaimada and Thutengala are concerned. That being a private arrangement between the private parties, the amendment cannot be questioned in that regard. The amendment does not force anyone to partition the properties, more so the Kaimada or the Thutengala. In the event of a partition suit being filed all contentions as are available can be raised.

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NC: 2024:KHC:29383 AND 1 OTHER 17.11. The exemption granted from making payment of taxes being primarily on the requirement of persons of the Kodava race to render military service to the Raja whenever called upon and now there being no such requirement, the claim for non-payment of tax would not survive, nor can it be countenanced in fact or law. By virtue of the amendment under sub-section (20) of Section 2, full ownership of the property is granted to the family, whereas under the Raja and/or the British, it was only a tenure in terms of the 'Jamma' tenure of bane lands which had been granted.

17.12. Now with full ownership of the land, an obligation for making full payment of taxes on the said land now fully owned by the family. This obligation cannot, in my considered opinion, be sought to be negated by relying on

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NC: 2024:KHC:29383 AND 1 OTHER the historical aspect of forced military service by members of the Kodava race.

17.13. The distinction sought to be made out by her in respect of privileged and unprivileged tenure would also no longer survive for consideration in view of the full ownership of land being granted by way of the amendment to sub- section (20) of Section 2.

17.14. The aspect of privileged or unprivileged tenure would have been necessary for consideration so long as the land was under a tenure and not under the full ownership. The tenure land could be alienated or unalienated. Alienated land could be used for growing coffee and unalienated land would continue to be used for activities incidental to agriculture. 17.15. Even though the alienated Jamma land less than 10 acres was free from assessment and

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NC: 2024:KHC:29383 AND 1 OTHER only land in excess of 10 acres would be assessed and tax payable, I am of the considered opinion that even the alienated Jamma land which continued to be owned by the Government and not by the family and now the land being owned by the family, such distinction of alienated or unalienated, privileged or unprivileged lands would not enure to the benefit of the Petitioners. 17.16.Insofar as the submission that partition would be a resultant of the rights conferred on individual members of the family which would lead to the breaking down of the Kodava family system and their customs or commercialization which would have an impact on the environmentally sensitive region, I am of the considered opinion that the use of the land would be regulated by the appropriate statute applicable thereto and any 'permission',

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NC: 2024:KHC:29383 AND 1 OTHER 'sanctions' or 'no objection' which are required for the utilisation of the land for commercial purposes, which may have an impact on the environment, would have to be adhered to and complied with by any and all members of the family.

17.17.The decision in Zoroastrian Cooperative Housing Societies' case is invoked to contend that a restriction amongst the Kodava race by custom, in respect of alienation of the property except within the patrilineal clan would be valid and that the same is taken away by amendment to sub-section (20) of Section 2 would also not be sustainable. Inasmuch as the said decision was rendered in the background of the fact that all the qualifications of a person to become a member of the society, the bye-laws mandating that it is only a member of Zoroastrian faith who could become the

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NC: 2024:KHC:29383 AND 1 OTHER member of the cooperative society and further impose restriction on alienation of the property to a person otherwise than belonging to the Zoroastrian faith. In that decision, persons had become members of the society voluntarily, accepted the terms and conditions and bye-laws of the society and therefore, the Hon'ble Apex Court came to a conclusion that all members are bound by the bye-laws of the society. 17.18.In the present case, though there may be a custom or a usage among the Kodava race not to partition the property, the same is a personal property right of the members of the Kodava race who may choose to partition or not, the joint family properties. The decision in Zoroastrian Cooperative Housing Societies' case would therefore not be applicable to the present facts and circumstances.

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NC: 2024:KHC:29383 AND 1 OTHER 17.19.The reference to DAV College Jalandhar's case for ascertaining linguistic minorities would also be of no assistance or relevance in the present matter. The amendment to sub-section (20) of Section 2 is not one based on linguistic minority, but as regards the nature of the Jamma Bane Land in Coorg, to either be owned by persons of the Kodava race or by persons belonging to any other community. 17.20.The impugned amendment is not made

with reference to a person belonging to the Kodava race or otherwise and as such, whether the members of the Kodava race would constitute a separate linguistic minority or not would not be relevant for the purpose of consideration in this matter.

17.21.Article 51(A) of Part-IV is reproduced hereunder for easy reference:-

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NC: 2024:KHC:29383 AND 1 OTHER 51A. Fundamental duties.--It shall be the duty of every citizen of India--

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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NC: 2024:KHC:29383 AND 1 OTHER 17.22.The reference to Article 51(A) of the Constitution of India being a duty cast on the State to preserve the heritage of our composite culture and the

invocation thereof to contend that the family traditions of the Kodava race, which is the culture of the Kodavas, in order to maintain their heritage, would also have no bearing in the present matter, since by way of the amendment, there is no violation of any culture or heritage. By way of the amendment, only the ownership rights are provided to the family.

17.23. It is for the members of the family to protect and preserve the rich heritage and culture of the family and the Kodava race. Merely by way of the impugned amendment, it cannot be stated that the State has violated its duty to preserve the rich heritage of the composite culture of the Kodava race.

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NC: 2024:KHC:29383 AND 1 OTHER 17.24. A submission is made that Jamma Bane lands are not government lands. It never belonged to the Raja or the British and the British did not hand it over to the Republic of India and as such, it is contended that the land would continue to be a private property and on that basis it is contended by relying upon Article 294

(b) of the Constitution of India that there is a duty cast upon the State to preserve these private properties with regards to the customs and traditions followed. Article 294 (b) of the Constitution of India only speaks of the rights, liabilities and obligations of the Government of the domain of India and the Government of each Governors' Province to be that of the Government of India and the Government of each corresponding States.

17.25. There is no such obligation contractual or otherwise, requiring the State to continue the

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NC: 2024:KHC:29383 AND 1 OTHER tenure of the land as Jamma Bane land so as to invoke Article 294 (b) of the Constitution of India. Similarly, Section 6 of the Karnataka General Clauses Act, 1989, which deals with repeal of any enactment, would also not be applicable since there is no repeal which has occurred. It is an amendment made in order to provide full right, title and interest in the property to members of the Kodava joint family.

17.26. The decision in Sardar Syedna Taher Saifuddin Saheb's case was one rendered in a situation where excommunication was permitted both as a punishment as also for preservation of religious denomination and it is in that background that it is held that the same is protected under Article 25 and 26 of the Constitution of India and the same cannot be questioned. That was a challenge made

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NC: 2024:KHC:29383 AND 1 OTHER specifically as regards power to excommunicate for self-preservation of religious denomination. In the present case, it cannot be said that the amendment to sub-section (20) of Section 2 would not preserve any religious denomination and/or bring about a division in the denomination which are already adverted to above. Hence, the decision in Sardar Syedna Taher Saifuddin Saheb's case would also not be applicable to the present facts.

17.27.In view of the above discussion, it is clear that by way of the amendment what is achieved is, to grant full ownership of the land to the Kodava family including all division holders i.e., all members of the family in a land which earlier had stood vested in the Government and the Government was the owner thereof. This conferment of full ownership in my considered opinion cannot be said to be in violation of any

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NC: 2024:KHC:29383 AND 1 OTHER custom, tradition or usage of the Kodava community.

17.28.As such, I answer point No.3 by holding that by way of the impugned amendment to subsection (20) of Section 2 and amendment to Section 8o of KLRA, 1964, there is no violation of any customary practice, usage or tradition of the Kodava race.

18. Answer to Point No.4: Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled? 18.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners in regard to this aspect is that a law cannot override any custom, usage or tradition. The answer to this has already been provided by Hon'ble Apex Court Adithayan's case and Animal Welfare Board of India's case, which would clearly and

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NC: 2024:KHC:29383 AND 1 OTHER categorically indicate that it is the Legislative enactment, which would have to be given effect to and that the same would override any customary practice, which had been prevalent and accepted for a long period of time. It is the Legislature, which is supreme and by way of legislative enactment any particular custom can be overridden, prohibited or regulated. Such overriding of a custom will not be a ground to challenge the legislation.

18.2. The grounds of challenge of a legislation have been detailed hereinabove and laid down by the Hon'ble Apex Court in many cases. An alleged isolation of custom is not a valid ground for such a challenge..

18.3. The above is also countenanced by several other enactments which have been enacted to get over certain social ills like dowry, child

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NC: 2024:KHC:29383 AND 1 OTHER marriage, etc. Though these were customs and traditions followed by different communities, by introduction of the Dowry Prohibition Act as also by introducing Section 498A into the erstwhile Indian Penal Code and now Sections 85 & 86 of the Bharatiya Nyaya Sanhita (for short, 'BNS'), the demand for dowry not only has been prohibited but has also been made a criminal offence.

18.4. Section 494 of the erstwhile IPC and now Section 82 of the BNS, criminalises bigamy. Bigamy also was a custom practiced by many. 18.5. By introducing the Prohibition of Child Marriage Act, 2006, marriage of a child/minor has been prohibited and criminalised.

18.6. Prior to the introduction of said enactment, child marriage was very much in vogue. Thus, all these enactments have been brought about

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NC: 2024:KHC:29383 AND 1 OTHER to bring about a social change, to overcome the social ills and to ostracize and/or criminalise certain practices which are contrary to the rights guaranteed under Part III of the Constitution of India.

18.7. These enactments though have done away with certain customs, usage or traditions by overriding, prohibiting or cancelling them have been held to be valid.

18.8. I answer Point No.4 by holding that by way of introducing a new enactment or by way of amendment to an already existing enactment, certain customs, usage or traditions as prevalent then, can be overridden, prohibited or cancelled by such a new enactment or amendment to an existing enactment.

19. Answer to Point No.5: Is the amendment made to Subsection (20) of Section 2 valid or not?

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NC: 2024:KHC:29383 AND 1 OTHER 19.1. Certain arguments have been advanced contending that this Court in Cheekere Poovaiah's case has not considered the customary rights and religious practices of the Kodavas and as such, the said judgment is not correct. The judgement in Cheekere Poovaiah's case having been rendered by the Full Bench of this Court, the said judgment would be binding not only on this Bench but also on the Petitioners. The said judgement having attained finality and no challenge having been made thereto.

19.2. Though in Cheekere Poovaiah's case, mineral rights and sub-soil rights were considered, the basic consideration of the matter was on account of the privileged and unprivileged Jamma Bane land as also the alienated and unalienated Jamma Bane land. The aspect of sub-soil rights and mineral rights was

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NC: 2024:KHC:29383 AND 1 OTHER considered in respect to payment of royalty to the Government. The rights of the Government as regards privileged and unprivileged Jamma Bane land as also alienated and unalienated Jamma Bane lands having been held to be vested with the State and the said properties having been held to be government land, it cannot now be contended by the Petitioners that the said judgment would only apply insofar as mineral rights or subsoil

rights. 19.3. In my considered opinion the said judgment would apply to all Jamma Bane lands as classified above. Be that as it may, as submitted by the learned Additional Advocate General, it is in order to provide full rights in the property which in Cheekere Poovaiah's case was held to be not available to the holder of Jamma Bane land, that the present amendment has been brought about. Thus,

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NC: 2024:KHC:29383 AND 1 OTHER even on this ground, the entire family becoming the owner of the land, the question of any of the rights of the member of a Kodava family being impinged upon does not arise. 19.4. As observed above, in answer to the earlier questions, as also in answer to the present question, by way of amendment of sub-section (20) of Section 2, what is sought to be achieved is grant of full ownership of land to the family and the members of the family. In effect, by way of amendment of sub-section (20) of Section 2, ownership rights are conferred on the occupant. This conferment of ownership rights is over and above the existing rights. It does not in any manner take away any right vested in the individual or the family. There is no disadvantage that the said amendment puts upon the family or any individual member of the family. The amendment to sub-section (20)

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NC: 2024:KHC:29383 AND 1 OTHER of Section 2 does not in any manner violate or impinge upon the rights guaranteed under Chapter 3 of the Constitution. In fact, by way of such amendment, full ownership rights have been granted.

19.5. There is equality brought about between the Kodavas and other occupants of the land inasmuch as the Kodavas could not have filed an application for regularization or grant of occupancy rights as regards Jamma Bane land prior to the impugned amendment. Whereas persons residing in other parts of the State could make application for grant of occupancy rights as regards the land which they were in occupation of in an authorized or unauthorized manner.

19.6. Thus, I answer Point No.5 by holding that the amendment of sub-section (20) of Section 2 is

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NC: 2024:KHC:29383 AND 1 OTHER not violative of any law. Therefore, it has to be held to be valid and in accordance with law.

20. Answer to Point No.6: Is the amendment to Section 8o of the Karnataka Land Revenue Act valid or not?

20.1. The contention Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the amendment to Section 8o, the Kodavas would now have to make payment of taxes/land revenue/land assessment as regards the Jamma Bane land which they were not paying earlier on

account of the tenure of the said land having recognized as a custom and as such, requiring the payment of taxes would be to the detriment of the Kodavas.

20.2. The amendment to Section 80 of the KLRA is in furtherance of the amendment made to sub-section (20) of Section 2 of the KLRA. By way of amendment to sub-section (20) of Section 2,

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NC: 2024:KHC:29383 AND 1 OTHER full ownership rights have been provided for. It is only prior to the grant of full ownership that the land was not fully assessed to tax. That is to say, by recognizing a concomitant of the land tenure, whereunder the land owner namely a Kodava was required to make payment of half the assessment in view of the military services required to be offered to the king. The condition of recognition of the land tenure and the condition for being eligible for reduced assessment was the requirement of the Kodava to provide military services to the King. As regards the land over which full ownership was not granted by the King to the Kodava or his family.

20.3. By way of amendment to sub-section (20) of Section 2 of the KLRA, firstly, full ownership rights have been granted to a Kodava family as regards the land owned by them and they

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NC: 2024:KHC:29383 AND 1 OTHER would be entitled to the usage of the said land as a full owner.

20.4. Secondly, the earlier condition for rendering military services is no longer in existence, since now, the recruitment made to any of the armed forces is on the basis of examination and selection process and not merely on the basis of holding the land as a Jamma Bane.

20.5. The decision relied upon in this regard in the Kunnathat Thatehunni Moopil Nair's case would also not enure to the benefit of the Petitioners. It was a case where the tax imposed was held to be violative of Article 19(1)(F) of the Constitution of India since the quantum of tax imposed was many times over the income from the forest land. That case was a challenge as regards the quantum and imposition of unreasonable restriction, which

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NC: 2024:KHC:29383 AND 1 OTHER could amount to being confiscatory in the event of default in making payment of taxes. That would not be the case here. The assessment of the land being on an agricultural basis, it is not the contention of any of the Petitioners that the said assessment is more than the income that could be earned.

20.6. By relying on Threesiamma Jacob's case, it is contended that the Hon'ble Apex Court has held that there is nothing in law which declares that all mineral wealth sub-soil rights vest in the State and further, ownership of sub-soil/mineral wealth should normally follow the ownership of the

land, unless the owner of the land is deprived of the same by some valid process. Relying on the same, it is submitted that Threesiamma Jacob's case impliedly overruled Cheekere Poovaiah's case insofar as the mineral rights are concerned. Even if

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NC: 2024:KHC:29383 AND 1 OTHER that may be, without expressing any opinion on the same, even if Cheekere Poovaiah's judgement were said to be overruled, the same would not enure to the benefit of the Petitioners insofar as the challenge to the amendment to sub-section (20) of Section 2 and amendment to Section 80 are concerned, since neither of these two amendments relate to any mineral or subsoil rights.

20.7. Even if the judgement in Threesiamma Jacob's case can be said to have overruled the observations made by the Full Bench of this Court in Cheekere Poovaiah's case as regards to subsoil and mineral rights, the basis of Cheekere Poovaiah's case is not taken away inasmuch as the finding in Cheekere Poovaiah's case that Jamma Bane land is government land and not individual personal property. That finding continues to hold the

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NC: 2024:KHC:29383 AND 1 OTHER field and has not been distinguished or overruled in Threesiamma Jacob's case. 20.8. By relying upon the decision in Rakesh Kohli's case, the learned Additional Advocate General has contended that it is only if a statute or amendment has been enacted without legislative competence or is in violation of any of the fundamental rights guaranteed under Part III of the Constitution of India that enactment can be struck down.

20.9. Even as regards a challenge under Article 14 of the Constitution of India when made, what the Court would have to see is whether the Act or amendment is violative of the equality clause or equal protection clause enshrined therein. His submission is that an enactment cannot be struck down by only stating that it is arbitrary or unreasonable. The same would have to be

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NC: 2024:KHC:29383 AND 1 OTHER established to be violative of the fundamental rights guaranteed under Part-III of the Constitution and only then, such a statute could be quashed and, on that basis, it is contended that the Petitioners have not been able to establish and/or satisfy this requirement. 20.10. The said decision of the Hon'ble Apex Court would answer the contention raised by Smt. Sarojini Muthanna, learned counsel for the Petitioners contending that the amendment is arbitrary and unreasonable on the ground that by way of the amendment a member of the Kodava family is now required to partition the property in order to make an entry of his name in the revenue records. Therefore, it is contended that it is unreasonable. The first aspect of requirement of partition and/or 11-E sketch having been dealt with hereinabove, if that aspect is eschewed, then the entire

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NC: 2024:KHC:29383 AND 1 OTHER arguments of Smt. Sarojini Muthanna insofar as the impugned amendment being arbitrary or unreasonable, would not stand.

20.11. It is clear from the reading of the judgements of the Hon'ble Apex Court in Rakesh Kohli's case, Ashoka Kumar Thakur's case, Binoy Viswam's case and Jaya Thakur's case that the scope of challenge to an act of legislation is limited. It is required for the person challenging an enactment or amendment passed by the legislature to establish that the said legislature did not have the competency and/or that the legislation is violative of Part-III of the Constitution of India. If a legislature had a competence to pass an enactment or an amendment, then, there would be no further requirement. It is only thereafter, that the aspect of whether there is a violation of rights guaranteed under Part-III of the Constitution of

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NC: 2024:KHC:29383 AND 1 OTHER India can be made. In the present case, there is no challenge to the competence of the legislature, but the challenge is only on account of the amendment allegedly violating fundamental rights, customs and tradition. 20.12. In view of my above reasoning, I answer Point No.6 by holding that the amendment to Section 8o of the KLRA is not violative of any constitutional provisions or any law and therefore is a valid law.

21. Answer to Point No.7: What is the effect of the impugned amendment?

21.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the impugned amendment, firstly, there will be a breakup in the joint family system. Secondly, the properties will be alienated. Thirdly, as a consequence of both the above,

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NC: 2024:KHC:29383 AND 1 OTHER the customs and traditions of the Kodava race would be violated.

21.2. The decision in B. Mohammad's case, relied upon in this regard, would also not enure to the benefit of the Petitioners, since by way of the amendment no right is taken away, but a right of full ownership is conferred upon the Kodava family as regards the lands owned by them. The corresponding obligation being payment of assessment/taxes. The ownership right now conferred retrospectively, but the obligation on payment of taxes/assessment being prospective, i.e., from the date on which the amendment came into operation , the decision in B. Mohammad's case which relates to the retrospective amendment would not apply. 21.3. The decision in Kongera T. Appanna's case was one relating to the determination of cost of

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NC: 2024:KHC:29383 AND 1 OTHER timber wherein it was held that the timber on Jamma Bane land belongs to the Government and ratable distribution of the cost of timber was ascertained in the said matter. By virtue of the amendment, once the Kodava family is granted full ownership of the land. The ownership of the timber, standing trees, etc., on the said land will also vest with the said family/individual. That being so, the Government will not have any right, title or interest in the timbers, standing trees or otherwise on the said property requiring the calculations. Once the right of the family or occupant are registered pursuant to sub-section (20) of Section 2, the entire process of calculation of timbers, trees or otherwise situated in the Jamma Bane land, permission for their sale and appropriation of the amounts

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NC: 2024:KHC:29383 AND 1 OTHER thereof would no longer be required, unless any other statutory provision mandates so. 21.4. One other effect of the amendment would be that with the full ownership of the land being vested with the family, the Government would not have any right, title or interest over the said property.

21.5. All the trees situated thereon and produced thereof would vest with the owner of the land. The question of the Government claiming any seigniorage or the like, as regards the trees grown on the said land would not arise. Any permission required by the family or its members for cutting any specific trees would necessarily have to be obtained and the procedure and formalities related thereto be adhered to. However, the State cannot claim

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NC: 2024:KHC:29383 AND 1 OTHER any ownership of anything grown on the said land.

21.6. In view of my answers to the earlier points, having come to a conclusion that the entire family will be registered as an occupant of the Jamma Bane land, I am of the considered opinion that by way of the amendment, there will be no requirement of partition to be effected among the members of the family. This is also borne out by the affidavit filed by the Under Secretary to the Revenue Department, Government of Karnataka, wherein it is categorically stated that for the purpose of registration of the name of a family member in the RTCs, there would be no requirement for a partition to be effected and/or for 11-E sketch to be obtained as regards the area falling to the share of each individual family members.

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NC: 2024:KHC:29383 AND 1 OTHER 21.7. By way of amendment, what is now only achieved is that the entire family would be registered as the occupant of the land including Jamma Bane land. The names of all the members of the family would also be entered into in Column No.9 thereby recognizing the rights of the entire family in respect of the property owned by the family including Jamma Bane land.

21.8. Whether they partition or not, whether they continue as a single united family or not and in the event of a partition being effected, which portion of the property would come to which member of the family and the rights of each member of the family to offer prayers to their ancestors as also to be buried/cremated in the family property are not matters which are covered by the amendment. These are aspects which are best left to the wisdom of the family

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NC: 2024:KHC:29383 AND 1 OTHER and its members. If all the members want to continue to be joint, the family could continue as a joint family property exercising ownership rights over the entire property. If any member of the family were to want to separate, the same would have to be so done in accordance with an agreement between the parties or in accordance with law since the Kodavas are governed by the Mitakshara branch of the Hindu law and as such, would be governed by the Hindu Succession Act, 1956 as amended from time to time.

21.9. Ultimately the effect of the impugned amendment is to confer full ownership rights over the Jamma Bane land and does not in any manner compel any member of the family to partition/separate himself or herself from the family and/or for the property to be divided by metes and bounds.

22. Answer to Point No.8: What order?

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NC: 2024:KHC:29383 AND 1 OTHER 22.1. In view of my answer to all the points above, I do not find the amendment to be violative of any law, let alone the Constitution of India. The grounds of challenge made to the said amendment, therefore, fail. The Petition stands dismissed.

22.2. The concerned District Administration/District Revenue Authority is hereby directed to issue a circular giving clarity and stating in detail the due process for entering the names of the joint family land owners into the revenue records vis-à-vis the amendment to Sub-section 2o of Section 2 of the Karnataka Land Revenue Act, 1964. The same to be complied with, within 30 days from the date of receipt of this order.

Sd/-

JUDGE PRS

Chaithanya Reddy S V vs Smt. Nayana on 30 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

-1-

NC: 2024:KHC:30117
CRL.P No. 4463 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 30TH DAY OF JULY, 2024
BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 4463 OF 2024
BETWEEN:

CHAITHANYA REDDY S.V.,
S/O GANGADHARA REDDY,
AGED ABOUT 32 YEARS,
PROFESSOR,
SRI. MEDA DEGREE COLLEGE,
NARAYANAPPA COMPOUND,
FORT, FORT MAIN ROAD,
BELLARY - 583 101.

...PETITIONER

(BY SRI. S.G. RAJENDRA REDDY., ADVOCATE)
AND:

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

1. SMT. NAYANA
W/O C.M. CHAITHANYA REDDY,
AGED ABOUT 31 YEARS
2. SANVI REDDY S.,
D/O CHAITHANYA REDDY,
AGED ABOUT 5 YEARS, MINOR
REPRESENTED BY HER MOTHER-NATURAL
GUARDIAN
R/AT RAJALAKSHMI,
SWADHARA GRUHA,
BANASHANKARI EXTENSION,
CHITRADURGA,

-2-

NC: 2024:KHC:30117
CRL.P No. 4463 of 2024

NOW R/AT ADISHAKTHI NAGARA,
CHITRADURGA - 577 401.

... RESPONDENTS

(BY SRI. D.P. MAHESH., ADVOCATE FOR R1;
R2 IS MINOR, REPRESENTED BY R1)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO SET ASIDE THE ORDER DATED 16.09.2021 PASSED BY THE PRL.
DIST. AND SESSIONS JUDGE, CHITRADURGA IN CRL.RP.
NO.27/2021 AND ALSO THE ORDER DATED 15.01.2021 PASSED BY THE PRL. CIVIL JUDGE AND JMFC, CHITRADURGA IN CRL.MISC.NO.280/2020.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

Petitioner is before this Court calling in question an order dated 16.09.2021 passed by the Principal District and Sessions Judge, Chitradurga in Crl.Rev.P.No.27/2021 by which the order of the Principal Civil Judge and JMFC, Chitradurga in Crl.Misc.No.280/2020 dated 15.01.2021 comes to be confirmed.

NC: 2024:KHC:30117

2. Heard the learned counsel Sri. S.G. Rajendra Reddy appearing for the petitioner and Sri. D.P. Mahesh appearing for the respondents.

3. Petitioner is the husband and first respondent is the wife and second respondent is the child, aged 5 years. Marriage between the petitioner and the first respondent takes place on 01.09.2017 and the child - second respondent is born from the wedlock. It transpires that later the relationship between the husband and the wife flounders and on floundering of the relationship, several proceedings were instituted by the wife against the husband, one setting the criminal law into motion for the offences punishable under Section 498A of Indian Penal Code, 1908 (hereinafter referred to as IPC for short) and Sections 3 and 4 of Dowry Prohibition Act, (hereinafter referred to as 'DP Act' for short) and the other invoking Section 12 of Protection of Women from Domestic Violence Act, (hereinafter referred to as DV Act for short).

NC: 2024:KHC:30117

4. The issue does not concern the merit of the matter in the crime or in the domestic violence proceedings. The wife files an application seeking interim maintenance from the hands of the husband, to herself and to the child, which comes to be allowed by the concerned Court in terms of which the order dated 15.01.2021 directing payment of interim maintenance at Rs.5,000/- each to first and second respondent. The husband challenges the same before the Principal District and

Sessions Court in the Crl.R.P.No.27/2021 only to be dismissed. It is these orders that has driven petitioner to file the subject petition.

5. Learned counsel for the petitioner would submit that the petitioner is earning Rs.30,000/- per month and works as an Assistant Professor in a private educational institution and payment of Rs.5,000/- each to the wife and child would be onerous on him. He further submits that the entire school fee of the child is being paid by the petitioner from the year 2022 onwards. He would further NC: 2024:KHC:30117 submit that the wife is employed in Infosys and therefore there is no necessity for the wife to seek maintenance and the Court granting maintenance in favour of the wife.

6. Per contra learned counsel representing the respondent -wife would refute the submissions to contend that after the birth of the child at the insistence of the petitioner she has quit the job and she has to now take care of the child. The amount that is ordered is not so exorbitant that the petitioner cannot pay. She would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by respective counsels appearing for the petitioner and the respondents.

8. The only issue that calls for consideration is that:

"Whether the orders passed by the concerned Courts would warrant any interference or otherwise?

NC: 2024:KHC:30117

9 The relationship between the parties is a matter of record. The husband is directed to pay maintenance at Rs.5,000/- to the wife and child each totaling to Rs.10,000/- per month. The submission of the learned counsel for the petitioner is that the petitioner is earning Rs.30,000/- and therefore he is not in a position to pay maintenance, is noted and only to be rejected.

10. As submitted by the learned counsel for the respondent - wife, is the wife has quit the job, to take care of the child at the insistence of the husband, it is the duty of the husband to maintain the wife and the child and not to wash of his hands from the responsibility of maintenance. The payment of the fees, paid that is by the petitioner, would not mean that the husband would not pay maintenance for the child, for living. Payment of the fees is all together different responsibility apart from the husband paying maintenance to maintain a child and the wife. If wife is now not in employment even otherwise, this is an order that directed to payment of interim NC: 2024:KHC:30117 maintenance which will always be subject to further orders to be passed before the concerned Court.

11. Learned counsel appearing for the respondents submits that as on today no maintenance as directed by the concerned Court is paid by the husband except Rs.30,000/-. According to the learned counsel, arrears is Rs.3,70,000/-. On a pointed question to the learned counsel for the petitioner, as to when the arrears would be cleared, the learned counsel for the petitioner submits that the petitioner is not in a position to clear the arrears and nor pay maintenance. On all these

factors entertaining a petition of the petitioner - husband who is in gross default in payment of maintenance, does not arise.

Finding no merit in the petition, the petition stands rejected.

Sd/-

(M.NAGAPRASANNA) JUDGE

Chandrakant vs Soowarna And Anr on 31 July, 2024

Author: K Natarajan

Bench: K Natarajan

-1-

NC: 2024:KHC-K:5649
CRL.RP No. 200032 of 2021

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL REVISION PETITION NO.200032 OF 2021
(397)

BETWEEN:

CHANDRAKANT
S/O LACHAPPA SUTAT,
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O MADIYAL, TQ. ALAND,
DIST. KALABURAGI,
NOW RESIDING AT BASAWESHWAR COLONY,
KALABURAGI-585101.

...PETITIONER

(BY SRI. SHARANABASAPPA K. BABSHETTY, ADVOCATE)

Digitally signed

AND:

by KHAJAAMEEN
L MALAGHAN

1. SOOWARNA

Location: High
Court Of
Karnataka

W/O CHANDRAKANT SUTAR,
AGE: 41 YEARS, OCC: HOUSEHOLD,
R/O MADIYAL, TQ. ALAND, DIST. KALABURAGI,
NOW RESIDING AT NEAR GADGIMATH,
MAKTHMPUR, KALABURAGI-585101.

2. SONY D/O CHANDRAKANT SUTAR (BADIGER),
AGE: 12 YEARS, MINOR U/G OF HER NATURAL

MOTHER

R/O MADIYAL, TQ. ALAND, DIST. KALABURAGI,
NOW RESIDING AT NEAR GADGIMATH,
MAKTHMPUR, KALABURAGI-585101.

. . . RESPONDENTS

-2-

NC: 2024:KHC-K:5649
CRL.RP No. 200032 of 2021

(BY SRI. ANANTH S. JAHAGIRDAR, ADVOCATE FOR R1;
R-2 IS MINOR R/P BY NATURAL GUARDIAN R-1)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397
R/W 401 OF THE CR.P.C., PRAYING TO SET ASIDE THE ORDER
DATED 11.12.2020 PASSED BY THE III ADDL. DIST. AND
SESSIONS JUDGE, AT KALABURAGI IN CRIMINAL APPEAL
NO.90/2019 AND THE ORDER DATED 06.11.2019 PASSED BY
THE PRL. CIVIL JUDGE AND JMFC, ALAND IN
CRL.MISC.NO.88/2014, DIRECTING THE PETITIONER TO PAY
MAINTENANCE OF RS.2,000/- PER MONTH TO THE 1ST
RESPONDENT WIFE AND RS.1,000/- TO THE 2ND RESPONDENT
DAUGHTER AND GAYATRI AND MONAPPA FROM THE DATE OF
PETITION.

THIS PETITION, COMING ON FOR ADMISSION THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN) This revision petition is filed by the petitioner/husband under section 397 of Cr.P.C., to set aside the order dated 06.11.2019 passed by the Prl. Civil Judge and JMFC in Crl.Misc.No.88/2014, for having granted maintenance of Rs.2,000/- per month, to the respondent No.1/wife and Rs.1,000/- per month, to the respondent No.2/daughter on the application filed by the respondent under Section 12 of the Protection of Women NC: 2024:KHC-K:5649 from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') which was upheld by the III Addl. Dist. and Sessions Judge, at Kalaburagi in Crl.A.No.90/2019 dated 11.12.2020.

2. Heard the arguments of learned counsel for the petitioner and learned counsel for the respondents.
3. The case of the petitioner is that the petitioner said to be married to respondent No.1 and marriage was solemnized as per Hindu law and the respondent No.2, was born out of the wedlock. After the marriage, the petitioner said to be addicted to the gambling and consuming liquor and

started insisting the respondent No.1 for bringing money from her parents house and they said to have arranged Rs.50,000/- . Later, again and again he was demanding Rs.15,00,000/- from her parents and they were unable to meet his demands. The petitioner said to have threatened her to alienate the properties and he has given torture. Hence, she said to be left the house of the petitioner and staying in some other place. Hence, NC: 2024:KHC-K:5649 filed complaint under section 12 of the DV Act against this petitioner. The petitioner being respondent before the Magistrate filed statement of objection contending that, after the birth of the child, the parents of the petitioner started demanding Rs.28,000/- towards the delivery expenses, but he could not pay. Therefore, the panchayat was held and they advised that there is no custom to pay delivery expenses by the respondent. Further, he contended that in the year 2001, he himself and petitioner No.1/wife went to attend a function and he found the petitioner No.1 and one Sampath were in a compromise position and he has caught them red-handed and the matter was published. Later, the elders advised petitioner no.1 not to make such mistake in future. Therefore, thereafter the petitioner No.1 shifted to Kalaburagi and they were living in a rented house. The petitioner No.1 developed intimacy with the owner of the house and also caught red-handed by the respondent on 9-8-2011. She was having sexual intercourse with the owner of the house. On the next day, the brother and NC: 2024:KHC-K:5649 brother's wife maternal uncle and grandfather of the petitioner, came to the house, they have taken the petitioner No.1 with them, now they are residing in their house. The petitioner filed false complaint against the respondent and she is living in adultery and not entitled for any relief. Hence, prayed for dismissing the petition.

4. On behalf of the petitioner/wife she herself examined as PW1 and got marked 7 documents and on behalf of respondent, he himself has examined as RW1 and got marked 25 documents. After hearing the arguments, the Magistrate allowed the petition in-part and directed the respondent/husband to pay Rs.2000/- as maintenance for the wife and Rs.1000/- to the child, and also a charge was created on the property, 1/4th share in Survey No.55/2, 57/1, 57/3.

5. Being aggrieved with the same, the respondent filed appeal before the Session judge in Crl.A.No.90/2019 came to be dismissed. Hence, the petitioner is before this court.

NC: 2024:KHC-K:5649

6. Learned counsel for petitioner contended that both the courts committed error in granting maintenance where respondent No.1 is living in adultery, she is having intercourse with one Sampath and also when shifted to the Kalaburgi she was having intimacy with the owner of the house. Therefore, her brother and her maternal uncle came and took her in the year 2011. Absolutely, there is no question of paying any maintenance to respondent no.1. Both the courts not appreciated the evidence on record. The civil case was also filed for the partition and hence prayed for allowing the petition.

7. The respondent counsel objected the petition contending that, he has taken specific contention of adultery, but he has not proved the same. He has not examined any other witnesses and no documents are produced. There is no evidence to show, they went to some functions in 2001 and caught red-handed and he is making false allegation to wife in order to avoid maintenance. Both the

courts appreciated the evidence on NC: 2024:KHC-K:5649 record and concurrent finding need not be entertained. Hence prayed for dismissing the petition.

8. Having heard the arguments, perused the record which reveals the petitioner married respondent No.1 and having a child born out of the wedlock is not in dispute. The dispute arises between the parties when the petitioner's parents said to have demanded Rs.28,000/- for delivery expenses and he has not paid the same. The case of the wife is that, he is always addicted to alcohol demanding money, assaulting her and she is living separately. These are admitted fact, both are living separately and having a child and the child is also with the mother. The respondent husband has taken contention that in the year 2001, the petitioner No.1, the wife and himself went to a function of the relatives. At that time, the petitioner no.1 was caught red-handed while having sexual intercourse with one Sampath son of Upendra and the incident got published. Elders have advised the petitioner No.1 not to make such mistakes in future. In NC: 2024:KHC-K:5649 order to prove the said contention, he has not examined any elders and he is not specifically mentioned in whose function, they went, on which date they went, how the petitioner No.1 was caught red-handed etc., is not proved. Another contention taken by him is that the petitioner wife is also having sexual intercourse with the owner of the house, when they had shifted to Kalaburgi when they were staying in a rented house, which reveals the respondent husband is unnecessarily making false allegations regarding illicit intimacy of the wife and always making complaint regarding adultery of the petitioner's wife and he has not proved the same. The petitioner/husband has filed the civil suit against sisters for partition dispute and has contended the property is not free for purpose of attaching. Be as it may, the relationship is not disputed, birth of the child is not disputed, living separately is not disputed. Such being the case, it is duty of husband to maintain wife and children. Therefore, the trial court after appreciating the evidence on record ordered for Rs.2000/- and Rs.1000/- respectively, as maintenance which is not NC: 2024:KHC-K:5649 exorbitant amount. First appellate court also re-appreciated the evidence on record and the appeal came to be dismissed. Such being the case, the concurrent finding of both the courts below is based upon the evidence on record and maintenance ordered is also very less. Such being the case, question of interfering in the order passed by both the court does not arises. Hence, petition is devoid of merits and is liable to dismissed.

Accordingly, this petition is hereby dismissed.

Sd/-

(K NATARAJAN) JUDGE AKV CT:SI

Cyril Samson vs Smt Lakshmi Pandiyan on 13 August, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

- 1 -

NC: 2024:KHC:32585
CRL.P No. 4792 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4792 OF 2022

BETWEEN:

1. CYRIL SAMSON
S/O MR THERESA NATHAN
AGED ABOUT 34 YEARS
RESIDING AT FLAT NO.110
GINCO BUILDING
INTERNATIONAL CITY PHASE - 2
WARSAN FOURTH
DUBAI
UNITED ARAB EMIRATES - 379 017
2. THERESA NATHAN
S/O ARULAPPAN
AGED ABOUT 68 YEARS
3. MRS. CAROLINE GEORGE
W/O MR THERESA NATHAN
AGED ABOUT 64 YEARS

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA
BOTH RESIDING AT NO.48,
ARUL NILAYAM,
SATHAYA MURTHY ROAD
RAMASWAMY PALYA
BANGALORE -560033

...PETITIONERS

(BY SRI. KAPIL DIXIT, ADVOCATE)

-2-

NC: 2024:KHC:32585
CRL.P No. 4792 of 2022

AND:

SMT LAKSHMI PANDIYAN
W/O CYRIL SAMSON
AGED ABOUT 33 YEARS
RESIDING AT NO.99/8
6TH CROSS, NARAYANAPPA ROAD
RAMASWAMY PALYA
MARUTHISEVA NAGAR
BENGALURU - 560033

CURRENTLY RESIDING AT:
NO.102, BIN OTAIBAH BUILDING
GIFT MART BUILDING
ELECTRA STREET
NEXT TO HAMED CENTRE
ABU DHABI
UNITED ARAB EMIRATES - 379 013

... RESPONDENT

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO DISMISS
THE ABOVE PETITION FILED BY THE PETITIONER U/S 12 OF
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 BY
IMPOSING EXEMPLARY, COMPENSATORY AND PUNITIVE COST
AGAINST THE RESPONDENT AND GRANT SUCH OTHER RELIEF AS
ARE JUST AND NECESSARY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

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NC: 2024:KHC:32585
CRL.P No. 4792 of 2022

ORAL ORDER

This Court, on 18.06.2024 had passed a peremptory order, which reads as follows:

"Two weeks time is granted to comply with the office objections, failing which, petition would be dismissed without reference to the Bench.

In the event, the office objections are complied with, list this matter at the appropriate stage without a memo."

Even today, the learned counsel for petitioners has not complied with the office objections. Therefore, the petition is dismissed for its non-prosecution.

Sd/-

(M.NAGAPRASANNA) JUDGE KG

Doddabasanagouda S/O Lingareddeppa ... vs Smt.Drakshayani W/O Doddabasanagouda on 24 July, 2024

Author: S.G. Pandit

Bench: S.G. Pandit

- 1 -

MFA No.102970/2019

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 24TH DAY OF JULY, 2024
PRESENT
THE HON'BLE MR JUSTICE S G PANDIT
AND
THE HON'BLE MR JUSTICE G BASAVARAJA
MISCELLANEOUS FIRST APPEAL NO.102970/2019 (MC)
BETWEEN:

VINAYAKA BV Digitally signed by VINAYAKA B V Location: HIGH COURT OF KARNATAKA DHARWAD BENCH	DODDABASANAGOUDA S/O. LINGAREDEPPA PYATI, AGE: 44 YEARS, OCC: WORKING IN GESCOM, R/O: CHALLUR VILLAGE, TQ. GANGAVATHI, DISTRICT. KOPPAL.	APPELLANT (BY SMT. SHIVALEELA ARAHUNAVI, ADVOCATE)
AND:		
SMT. DRAKSHAYANI W/O. DODDABASANAGOUDA, AGE: 38 YEARS, OCC: HOUSEHOLD WORK, R/O: CHALLUR VILLAGE, TQ. GANGAVATHI, DISTRICT. KOPPAL.		RESPONDENT (BY SRI ARAVIND D.KULKARNI, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28 OF THE HINDU MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE DATED 21.02.2019 PASSED IN M.C.NO.11/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GANGAVATHI, DISMISSING THE PETITION FILED UNDER SECTION 131(A), 1(B) OF THE HINDU MARRIAGE ACT AND ETC.,

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD

AND RESERVED ON 16.07.2024 AND COMING ON FOR
PRONOUNCEMENT OF ORDERS, THIS DAY, BASAVARAJA J.,
DELIVERED/PRONOUNCED THE FOLLOWING:

-2-

MFA No.102970/2019

CORAM : HON'BLE JUSTICE S.G. PANDIT

AND

HON'BLE JUSTICE G. BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE JUSTICE G. BASAVARAJA) The appellant-husband has preferred this appeal against the judgment and decree passed by the learned Senior Civil Judge and JMFC, Gangavathi (for short 'trial Court') in M.C. No. 11/2015 dated 21.02.2019, dismissing the divorce petition filed by the appellant. Parties are referred to the same ranks as assigned by the trial Court.

2. The brief relevant facts leading to this appeal is that the petitioner-husband filed a petition u/S 13, 1(a) and 1(b) of the Hindu Marriage Act, against the wife for dissolution of marriage. It is stated that respondent is the legally wedded wife of the Petitioner. The marriage of the petitioner and respondent was solemnized on 20.06.1999 in front of the house of the respondent as per customs prevailing in their community. After the marriage, petitioner and respondent led marital life for a period of 7-8 years. There are no issues out of their wedlock. The houses of the petitioner and respondent are situated in the same area of the same village. Though petitioner did not subject the respondent to any harassment, she used to quarrel with the petitioner often and repeatedly visit her parents' house. The petitioner used to regularly bring her back to the marital home. Without any valid reasons, the respondent used to quarrel with the petitioner and his mother. She deserted the petitioner without any reason and started residing at her paternal home. Therefore, on 10.11.2009, petitioner issued a legal notice to the respondent seeking restitution of conjugal rights. Respondent has refused to take the said notice and did not return to the marital home. The respondent threatened to commit suicide if she were forced to lead marital life with the petitioner. She lodged false dowry harassment case against the petitioner and his family members. She also filed maintenance petitions against the petitioner. It is contended that the conduct of the respondent showed that she was not interested in leading marital life with the petitioner. Respondent had lodged many cases on the suspicion that the petitioner had married a child. It is contended that the respondent has filed complaint against the petitioner and two others before Karatagi Police Station for the offence punishable under Sec.498(A), 325, 504, 506 R/w Sec.34 of I.P.C., and 3 and 4 of Dowry Prohibition Act. On 16.08.2013, Respondent has lodged a complaint against Petitioner and 10 others before Ballari Rural Police under the Child Marriage Prohibition Act, 2006. On 27.08.2003, respondent filed a private complaint against petitioner and 12 others before the Additional Civil Judge and JMFC, Gangavathi for the offences punishable under Sec.494, 109 R/w Sec.34 and 149 of I.P.C. On 03.09.2013, respondent has filed a complaint against petitioner and his mother before the Additional Civil Judge & JMFC under Protection of Women from Domestic Violence Act. On 12.09.2013, respondent has filed M.C.No.51/2013 against the petitioner for

cancellation of marriage. On 19.09.2013, Respondent has lodged a complaint against the petitioner before Karatagi Police for offences punishable under Sec.341, 323, 504, 508 R/w Sec.34 of I.P.C. On 15.10.2013, Karatagi Police have registered a case against the petitioner and his family members under Crime No.153/2013 for an offence punishable under Sec. 107 CR.P.C. On 02.06.2014, the respondent has lodged a complaint against the petitioner and 11 other members before Karatagi Police for the offence punishable under Sec. 143, 147, 341, 323, 324, 354, 504, 506 R/w Sec. 149 of I.P.C. It is further contended that the respondent has left the matrimonial home without any reason and has started residing in her paternal house. All the efforts made by the petitioner to bring back the respondent to the matrimonial home has gone in vain. On all these grounds, sought to allow the petition.

3. In response to the notice issued by the trial Court, the respondent appeared through her counsel and filed her statement of objections contending that she is the legally wedded wife of the petitioner as alleged in the petition. Further she has contended that she is ready to lead marital life with the petitioner; the petitioner threw her out of the marital home by asking her to bring additional dowry of Rs.5,00,000/- for the purpose of his further education and job. It is contended that respondent's parents gave Rs.5,00,000/- to the Petitioner for the completion of his C.P.E.D education by selling their land measuring 1 acre 30 guntas. On the ill advise of his mother, petitioner started to harass the respondent by not providing food. He used to consume alcohol and assault the respondent. Respondent tolerated all the harassment meted out on her. Petitioner and his mother spread rumours in their village that the respondent is a barren lady. After medical checkup, respondent came to know that she could not conceive a child as petitioner had low sperm count. After she came to know about this fact, petitioner started to dislike the respondent. He started quarrelling with the respondent for silly reasons and started to harass the respondent asking her to consent for second marriage. When the respondent refused the same, petitioner assaulted the respondent. He snatched her Mangalasutra and sent her to parental home demanding her to return with additional dowry of 5 lakhs rupees and 1 acre 20 guntas of land. It is contended that all the cases filed against the petitioner are not intentional one but due to fault of the petitioner. It is contended that on 12-8-2013, petitioner contracted second marriage with one Manjula d/o Thimmanagouda, R/o Somasamudra. The said Manjula was aged about 15 years at the time of marriage. Hence, respondent has filed a complaint against the petitioner before the Rural Police Station, Ballari which was registered under Crime No.245/2013 under Sec.9, 10 and 11 of Prohibition of Child Marriage Act. It is further contended that when the Additional Civil Judge and JMFC., passed a residential order under Sec.17 and 18 of DV Act to share the dwelling house, petitioner did not allow the respondent to enter the marital home. It is contended that the petitioner was beaten on 19.09.2013 before the Police. As such, she filed a case against the petitioner for violation of the Court order under Crime No. 138/2013. It is further contended that the petitioner and family members have tried to kill the respondent. Therefore, she filed a complaint against them and the same is registered as crime No.156/2014. It is contended that it is not wrong to seek the remedy under the law for the wrongs done against her. It is contended that the petitioner has managed to get 'B' report to be filed in some of the cases. He has also filed many criminal cases against the respondent and her relatives. It is contended that the petitioner has threatened to kill the respondent if she did not take back the cases. Therefore, till today her life is under threat. It is contended that the petitioner has also alienated the lands owned by him in order to deprive the legitimate claim of maintenance of the

respondent. It is contended that in order to harass, petitioner colluded with his mother and his sister to file false criminal cases against the respondent and her family members. It is contended that due to life threat, respondent is living with her brother and parents at Gangavathi by taking a rented house. It is further contended that tolerating all these aspects, till today she is ready to live with the petitioner if he executes a bond to live with harmony, love and care by leaving the second wife. Petitioner has not shown the specific grounds for dissolution of marriage. On these grounds, she prayed to dismiss the petition filed by the petitioner with cost.

4. To prove the case of the petitioner, petitioner himself is examined as PW1 and another witness by name Sarvagnyamurthy is examined as PW2. Documents are marked as per Exs.P.1 to P.21. On closure of petitioner side evidence, the respondent herself is examined as RW1 and another witness by name Amaregouda is examined as R.W.2. Documents are marked as per Exs.R.1 to R.29. Having heard arguments of both sides, the trial Court has dismissed the petition. Being aggrieved by the judgment and decree passed by the trial Court, the petitioner-husband has preferred this appeal.

5. Learned counsel appearing for the petitioner-husband would submit that the impugned judgment and decree passed by the trial Court is contrary to law and facts of the case. It erred in not considering the fact that though the petitioner was ready and willing to lead marital life with the respondent-wife, but she is not willing to join the petitioner. Even she has deserted the petitioner. Though the petitioner, his parents and well-wishers tried to settle the issue, the respondent refused to join the petitioner to lead marital life and went on filing cases one or the other against the petitioner, his mother and others only with an intention to harass the petitioner and his mother. The marriage of the petitioner and respondent was solemnized on 20.06.1999. The respondent has not filed any case against the petitioner till the trial Court erred in holding at page no. 17 of judgment that filing of complaint by a wife for redressal of her grievance cannot amount to cruelty. It is admitted that respondent has consistently gone on filing criminal cases one after other against the petitioner and his mother. The respondent started filing the said cases after the year 2013 against him and his mother and before that she never complained any such case. This shows that respondent only with an intention to harass the petitioner has filed those cases.

6. Further, the petitioner has not been convicted for any offences till this day. The petitioner and other accused in C.C. No. 925/2013 were acquitted by the learned Addl. Civil Judge & JMFC, Gangavathi vide judgment dated 02.03.2020; so also acquitted in C.C. No. 44/2014 by learned Sr. Civil Judge & JMFC, Gangavathi dated 08.07.2019 and also were acquitted in C.C. No.1005/2014 by the learned Addl. Civil Judge, Gangavathi, dated 09.04.2023. Copies of judgments in these cases are made available before the Court.

7. As per criminal jurisprudence man is to be treated as innocent until proved guilty. On this ground also the trial Court

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has erred in dismissing the petition. He would further submit that respondent has deserted the petitioner and though on several occasions requested her to come and lead marital life with the

petitioner, the respondent was not ready to join with the petitioner. The respondent has filed various cases against the petitioner and his mother even against the relatives of the petitioner which clearly establishes the fact that respondent deserted the petitioner voluntarily without any cause and caused cruelty by filing one after other cases against the petitioner. Thus he submits that Sec. 13 of the Hindu Marriage Act has not defined the meaning of cruelty. These kind of cases are very sensitive and cannot be dealt in mechanical or on the basis of technical issues. Because in these kind of cases, life of two persons and the people depending on them is involved.

8. The appellant/petitioner sought divorce on the ground of cruelty and desertion. There cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. To substantiate his arguments, learned counsel for appellant relied on the decision of the Hon'ble Apex Court in the case of Samar

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Ghosh Vs. Jaya Ghosh¹. Therefore, the petition like this cannot be dismissed on too technical points and have to be dealt in more meaningful manner. The trial Court has failed to appreciate the evidence on record in accordance with law and facts. Hence, he sought to allow this appeal.

9. As against this, learned counsel for the respondent would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts which does not call for any interference by this Court. He sought for dismissal of the appeal.

10. Having heard the arguments of both sides and on perusal of the original records and appeal papers, the following points would arise for our consideration.

(1) Whether the petitioner/husband/appellant has made out grounds to interfere with the impugned judgment and decree passed by the trial Court? (2) What order or decree?

11. Our answers to the above points are as under:

Point No. 1: In the negative

Point No. 2: As per final order for the following:

(2007) 4 SCC 511

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REASONS

12. Point No. 1: We have examined the materials placed

before the Court. Before appreciating the evidence on record, it is appropriate to mention here as to the reasons for divorce on cruelty as held by Hon'ble Apex in Samar Ghosh (*supra*) wherein at paragraph nos.100 and 101 has observed as under:

"100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is

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such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy

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period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

13. Admittedly, there are various cases registered in between the petitioner and respondent as is evident from Exs.P.3 to P.15, i.e., FIR, complaint, copies of petitions filed by the

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respondent against the petitioner under IPC and Dowry Prohibition Act. The respondent has also filed copy of the complaint filed against the petitioner under Domestic Violence Act. It is also alleged by the respondent that the petitioner has committed bigamy by marrying a minor girl aged 15 years for which a case is also filed against the petitioner and others under the Child Marriage Act in Ballari. Exs.P.2 to P.13 reveal that most of the cases are still pending trial and not attained finality.

14. Considering all these aspects the trial Court has rightly considered that filing of complaint by a wife to redress her grievances cannot amount to cruelty. The documents produced by the respondent shows that the concerned Court has granted maintenance to her under the Domestic Violence Act. The right to file complaint to seek redressal of respondent's grievance or to seek maintenance is a legal right conferred on a Hindu wife under various legislations and if the wife asserted such a right approaching the Court of law, it only shows that she is a law abiding citizen and she has not meted out cruelty on her husband.

15. The trial Court has properly appreciated the evidence on record in accordance with law and facts and the petitioner has

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failed to prove the essential ingredients of dissolution of marriage on the ground of cruelty. On re-appreciation/ re-examination/ re-consideration of the entire material on record keeping in mind the decision of Hon'ble Apex Court in Samar Ghosh (supra), we do not find any error or infirmity in the impugned judgment.

16. With regard to desertion is concerned, the petitioner has also failed to establish that the respondent has deserted him for continuous period of not less than two years immediately preceding presentation of the petition without reasonable cause and without consent or against the wish of such party, as per Explanation of Sec. 13 of Hindu Marriage Act, 1955. Accordingly, petitioner is not entitled for dissolution of marriage on the ground of desertion also.

17. A perusal of the copies of the judgments in C.C. No. 925/2013 passed by the learned Addl. Civil Judge & JMFC, Gangavathi 02.03.2020; in C.C. No. 44/2014 passed by learned Sr. Civil Judge & JMFC, Gangavathi dated 08.07.2019 and also in C.C. No.1005/2014 by the learned Addl. Civil Judge, Gangavathi, dated 09.04.2023 it is clear that the petitioner/ appellant and other accused have been acquitted by the Court.

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18. On careful examination of these judgments it is seen that all the accused including the present petitioner were acquitted as the prosecution has failed to prove guilt of the accused beyond all reasonable doubt. The said judgments of acquittal are not honourable acquittal. Mere acquittal in the above said cases do not mean that the respondent has filed false complaint against the petitioner and others. The trial Court has not initiated any proceedings against the present respondent stating that false complaints are filed against the petitioner. Hence, mere acquittal by the concerned Courts

is not a ground to hold that the petitioner has proved cruelty and desertion as defined u/S 13, 1(a) and 1(b) of Hindu Marriage Act, 1955.

19. The preponderance of probabilities are sufficient to come to the conclusion that whether the petitioner is subjected to cruelty or not. Accordingly, the trial Court has rightly appreciated the evidence on record in a proper and perspective manner which does not call for any interference. Hence the arguments advanced on behalf of the appellant cannot be accepted. Accordingly, point no.1 is answered in the negative.

20. Point No. 2: For the foregoing reasons and discussions, we pass the following order.

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ORDER Appeal filed by the appellant is dismissed.

Sd/-

JUDGE Sd/-

JUDGE bvv

Dr Veena S Nair vs Ramabhadran Chellappan Pillai on 13 August, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:32689
CRL.P No. 4543 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 4543 OF 2024

BETWEEN:

DR. VEENA S NAIR
W/O BIPIN BHADRN
AGED ABOUT 37 YEARS
R/AT YASH CLASSIC ENCLAVE
HOUSE NO 36, FIRST FLOOR
KALYAN NAGAR BANGALORE - 560 043.

...PETITIONER

(BY SRI MAHESHA P, ADV.)
AND:

1. RAMABHADRAN CHELLAPPAN PILLAI
S/O CHELLAPPAN PILLAI
AGED ABOUT 72 YEARS
R/AT 426/201, # RD
TC3/2730-1, PKRA-11

Digitally
signed by
NANDINI MS

Location:
High Court of
Karnataka

THIRUVANANTHAPURA
PATTOM KERALA - 695 004.
2. THE STATE OF KARNATAKA BY
BANASAWADI POLICE STATION
RESPONDENT ITS REPRESENTED
BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING

BANGALORE - 560 001.

... RESPONDENTS

(BY SRI ARUN GOVINDRAJ, ADV., FOR R-1;
SRI VINAY MAHADEVAIAH, HCGP FRO R-2)

THIS CRL.P IS FILED U/S.439(2) CR.P.C PRAYING TO CANCEL
THE BAIL ORDER DATED 05.04.2024, GRANTED IN
CRL.MISC.NO.3194/2024 (CR.NO.226/2024) PASSED BY THE

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NC: 2024:KHC:32689
CRL.P No. 4543 of 2024

HONOURABLE LXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU AND CANCEL THE BAIL ORDER DATED 05.04.2024
PASSED BY THE LXXI ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BENGALURU.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

This petition under Section 439(2) of Cr.P.C, is filed by the defacto complainant with a prayer to set aside the order dated 05.04.2024 passed by the Court of LXXI Addl. City Civil & Sessions Judge, Bengaluru in Crl.Misc.No.3194/2024, wherein anticipatory bail was granted to respondent No.1 who is accused in Crime No.226/2024 registered by Banaswadi Police Station, Bengaluru for the offences punishable under Sections 323, 354 & 504 of IPC.

2. Heard the learned counsel appearing for the parties.

3. FIR in Crime No. 226/2024 was registered by Banaswadi Police Station, Bengaluru city against NC: 2024:KHC:32689 respondent No.1 herein on the basis of first information dated 27.03.2024 received from the petitioner herein, who is the daughter-in-law of respondent No.1. Apprehending arrest in the said case, respondent No.1 had filed Crl.Misc.No.3194/2024 before the sessions Court which was allowed on 05.04.2024 subject to certain conditions. Being aggrieved by the same, the defacto complainant / petitioner is before this Court.

4. Learned counsel for the petitioner submits that the petitioner who is a defacto complainant was not heard in the matter before anticipatory bail was granted to respondent No.1. He submits that the petitioner is the victim in the present case. Therefore, she has a right of being heard. In support of his arguments he has placed reliance on the following judgments of the Hon'ble Supreme Court.

1. JAGJEET SINGH AND ORS V. ASHISH MISHRA @ MONU AND ANR - AIR ONLINE 2022 SC 552 NC: 2024:KHC:32689

2. SUBHOD KUMAR YADAV V. STATE OF BIHAR AND ANOTHER - (2009) 14 SCC 638

3. DINESH M.N. V. STATE OF GUJARAT -

(2008) 5 SCC 66.

5. Per contra, learned counsel for respondent No.1, who has filed his statement of objections submits that there is matrimonial dispute between the petitioner and her husband, who is the son of respondent No.1. Only to harass and coerce the family of respondent No.1, a false case has been registered against him by the petitioner. He submits that the petitioner is residing separately and she has initiated proceedings against her husband and in laws under the provisions of the Protection of Women from Domestic Violence Act, 2005. He has referred to various proceedings initiated by the petitioner as narrated in the statement of objection and submits that the petitioner is in a habit of filing false cases. He submits that incident in question had taken place in the house of respondent No.1 and the petitioner who NC: 2024:KHC:32689 came there had fought with her husband and respondent No.1 and thereafter a false complaint was filed.

6. Learned HCGP appearing for respondent No.2 submits that respondent No.1 has complied the conditions imposed by the learned Sessions Judge while granting anticipatory bail to him in Crime No.226/2024. He submits that respondent No.1 does not have any criminal antecedents.

7. The material on record would go to show that, there are several matrimonial disputes between the petitioner and her husband, who is the son of respondent No.1. The petitioner is staying separately along with her daughter in a different premise and on the date of incident, she had come to the premises, in which her husband and respondent No.1 are staying and the alleged incident had taken place in the said house. Learned Sessions Judge having appreciated this aspect of the matter and also considering the NC: 2024:KHC:32689 nature of allegation made against respondent No.1 and its gravity has granted anticipatory bail to respondent No.1. I do not find any illegality or irregularity in the said order passed by the learned Sessions Judge.

8. The Criminal Procedure Code does not provide any provision, which gives a right of being heard to the defacto complainant / victim in every case. In the case of JAGJEET SINGH(supra), the victim had filed application opposing bail and in spite of the same the victim was not granted an opportunity of being heard. It is in this background, the Hon'ble Supreme Court has observed that the victim had a right to be heard at the stage of adjudication of the bail application of accused. The petitioner had not made any such application before the learned Sessions Judge.

9. The judgment in the case of SUBHOD KUMAR YADAV (supra) and DINESH M.N.(supra) have NC: 2024:KHC:32689 been passed on the facts and circumstances of the said case which would not be applicable to the present case. The allegation found in the present case as against respondent No.1 are neither grave or serious in nature and the background in which the present criminal case

has been registered against respondent No.1 also requires to be appreciated.

10. It is trite that unless supervening circumstances are made out, in normal circumstances, the bail granted to the accused cannot be cancelled. Under these circumstances, I do not find any good ground to entertain this petition.

11. Accordingly, the petition is dismissed.

SD/-

(S VISHWAJITH SHETTY) JUDGE NMS

Hanumanthegowda vs The State Of Karnataka on 6 August, 2024

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NC: 2024:KHC:31262
CRL.P No. 7629 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MRS JUSTICE M G UMA
CRIMINAL PETITION NO. 7629 OF 2021

BETWEEN:

1. HANUMANTHEGOWDA,
S/O RANGE GOWDA,
AGED ABOUT 78 YEARS,
R/AT NO.14, RACHENAHALLI,
TEJUR POST, HASSAN TALUK
AND DISTRICT - 573 201.
2. SMT. SHYLA,
W/O RAMESH S.K.,
AGED ABOUT 33 YEARS,
R/AT SHANKARANAHALLI,
KATTAYA HOBLI, HASSAN DISTRICT - 573 201.
3. SRI RAMESH S.K.,
S/O KRISHNEGOWDA,

AGED ABOUT 36 YEARS,

PRESENTLY R/AT JAMMU AND KASHMIR,
WORKING IN ARMY (BSF),
R/AT SHANKARANAHALLI,
KATTAYA HOBLI, HASSAN DISTRICT - 573 201.
4. SRI. DEVARAJ,
S/O GOPALEGOWDA,
AGED ABOUT 55 YEARS,
R/AT BUILDING OLD NO. 34,
MIG B 39, KHB APARTMENT,
KENGERI SATELLITE TOWN,

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NC: 2024:KHC:31262
CRL.P No. 7629 of 2021

BENGALURU - 560 060.

5. SMT. RANI,
W/O DEVARAJ,
AGED ABOUT 41 YEARS,
R/AT MIG, B 39, OLD NO.34,
SHIRKE APARTMENT,
KENGERI SATELLITE TOWN,
BENGALURU - 560 060.

6. SRI. HARISH R.H,
AGED ABOUT 41 YEARS,
S/O MR. HANUMANTHEGOWDA,
R/AT NO.14, RACHENAHALLI
TEJUR POST, HASSAN TALUK
AND DISTRICT - 573 201.

...PETITIONERS

(BY SRI. PRASANNA D.P, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY CHANNAMMANAKERE,
ACHCHUKATTU POLICE, BENGALURU - 560 085,
REPRESENTED BY SPP, HIGH COURT COMPLEX,
BENGALURU - 560 001.

2. SMT. ARUNAKSHI M.R,
AGED ABOUT 37 YEARS,
W/O NAGESH R.H,
R/AT NO.54, SHAMANNA
BUILDING, 5TH CROSS, KATHREGUPPE,
BENGALURU - 560 085.

...RESPONDENTS

(BY SMT. ASMA KOUSER, ADDL. SPP FOR R1;
SRI. K.N. CHANDRA SHEKAR, ADVOCATE FOR R2)

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NC: 2024:KHC:31262
CRL.P No. 7629 of 2021

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE PROCEEDINGS IN PENDING ON THE FILE OF THE
2ND A.C.M.M., IN C.C.NO.3381/2018 FOR THE OFFENCE P/U/S
498A OF IPC AND UNDER SEC.3 AND 4 OF D.P ACT IN RESPECT
TO PETITIONERS OR CONCERN.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE M G UMA

ORAL ORDER

The petitioners being accused Nos.2, 4 to 8 are seeking to quash the criminal proceedings registered against them in C.C.No.3381/2018 pending on the file of the Learned II Additional Chief Metropolitan Magistrate, Bengaluru for the offence punishable under Section 498A of Indian Penal Code (for short 'the IPC') and under Sections 3 and 4 of Dowry Prohibition Act, 1961 (for short 'DP Act').

2. The brief facts of the case are that, respondent No.2 being the informant lodged the FIR against accused Nos.1 to 8 alleging commission of offences punishable NC: 2024:KHC:31262 under Section 498A read with Section 34 of IPC and Section 3 and 4 of DP Act on 26.11.2015. It is alleged that she married accused No.1 on 08.05.2008. At the time of marriage, the accused have demanded dowry and accordingly, cash of Rs.5,00,000/-, gold ornaments weighing 200 grams was paid as dowry. Later, she gave birth to a female child and thereafter, all the accused started ill-treating her. There was a panchayath in the family, inspite of that accused No.1 had assaulted her on 24.08.2015 in the midnight and caused injuries. When she called the Police, accused No.1 had fled from the scene of occurrence. Therefore, she requested the Police to register the case against accused persons.

3. Investigation was undertaken and the charge sheet was filed for the above said offences against all the eight accused. As per column 17 of the charge sheet , the only allegation against these petitioners is that, with common intention they ill-treated her both physically and mentally for not bringing additional dowry.

NC: 2024:KHC:31262

4. Heard Sri. Prasanna D.P., learned counsel for the petitioners, Smt. Asma Kouser, learned Additional SPP for respondent No.1 and Sri. K.N.Chandra Shekar, learned counsel for respondent No.2 Perused the materials on record.

5. Learned counsel for the petitioners contended that the petitioners are arrayed as accused Nos.2, 4 to 8. Accused No.3 being the mother is already dead. Accused No.2 is the father of accused Nos.1, aged 78 years. He is residing with accused No.8, who is the brother of accused No.1. Accused No.4 is the sister of accused No.1 and accused No.5 is her husband. Since accused No.5 is serving in the army and was posted in Assam at the time of so called incident and now he is retired from the service and thus accused Nos4 and 5 are residing separately. Accused Nos.6 and 7 are the far relatives of accused No.1 and both of them are residing in Bengaluru.

NC: 2024:KHC:31262

6. Learned counsel submits that accused No.1 had filed M.C.No.4355/215 on 23.09.2015 against respondent No.2 seeking dissolution of marriage. It is only thereafter, the present complaint was came to be filed on 26.11.2015 making bald allegations. She has also filed Crl.Misc.No.138/2015 under the provisions of the Protection of Women from Domestic Violence Act, 2005. On 15.12.2015, she further filed Crl.Misc.No.502/2019 under Section 125 of Cr.P.C. All these proceedings are still pending. This shows the conduct of respondent No.2 in filing a false complaint, making baseless allegations against these petitioners and even after investigation, nothing has been found against these petitioners. It is nothing but abuse of process of law and hence, he prays for allowing the petition.

7. Per contra, learned Additional SPP opposing the petition submitted that admittedly respondent No.2 married accused No.1 during 2008. She has been ill-treated after receiving the dowry and there was a demand NC: 2024:KHC:31262 for an additional dowry. Since respondent No.2 gave birth to a female child, all the accused were ill-treating her. On 28.04.2015, the accused have assaulted her and caused injuries. There is prima-facie material to attract penal provisions. Hence, he prays for dismissal of the petition.

8. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

"Whether the petitioners have made out any grounds to allow the petition?"

My answer to the above point is in "Affirmative" for the following:

REASONS

9. Respondent No. 2, filed the first information on 26.11.2015 alleging that at the time of her marriage on 08.05.2008, there was a demand for dowry and dowry of Rs.5,00,000/- in cash and 200 grams of gold jewels were given. After seven years of the marriage the informant NC: 2024:KHC:31262 has filed the first information. However, bald allegations are made against the petitioners that there is a demand for additional dowry from all the accused. Except such allegation, no other allegations have been made against the petitioners.

10. It is the specific contention of respondent No.2 that on 24.08.2015 at midnight it was accused No.1 who assaulted her and caused injuries. However, accused No.1 is not before this Court. Except making bald allegations regarding demand for dowry against these petitioners, no other allegations have been made and there is absolutely no prima-facie materials to connect the petitioners to the commission of offence.

11. It is pertinent to note that admittedly, accused No.1 filed M.C.No.4355/2015 on 23.09.2015 seeking dissolution of marriage. It was only thereafter, first information came to be filed on 26.11.2015 and the FIR came to be registered. It is also pertinent to note that NC: 2024:KHC:31262 Crl.Misc.No.138/2015 was filed by respondent No.2 under the provisions of DV Act on 15.12.2015. Apart from that, she has filed Crl.Misc.502/2019 under Section 125 of Cr.P.C. All these

developments disclose that respondent No.2 had recourse to law against the petitioners only after accused No.1 filed the petition seeking dissolution of marriage.

12. Even though the serious allegations are made, it is only against accused No.1. The allegations for having demanded dowry is based on bald and general allegations against parents of accused No.1, his sister, brother, brother-in-law, and relatives.

13. Considering all these facts and circumstances, I am of the opinion that there is no prima-facie material to proceed against these petitioners. Continuation of criminal proceedings against these petitioners will be abuse of process of law and therefore, the same is required to be quashed.

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NC: 2024:KHC:31262

14. Accordingly, I answer the above point in the Affirmative and proceed to pass the following:

ORDER

- i) The petition is allowed.
- ii) The criminal proceedings against the petitioners (accused Nos.2, 4 to 8) in C.C.No.3381/2018 pending on the file of the Court of the II Additional Chief Metropolitan Magistrate, Bengaluru is hereby quashed.

Sd/-

(M G UMA) JUDGE GJM CT: BHK

Joseph Kevin Selvadoray vs The State Of Karnataka on 1 August, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:30519
CRL.P No. 5930 of 2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 5930 OF 2024

BETWEEN:

JOSEPH KEVIN SELVADORAY
S/O LATE J E SELVADORAY
AGED ABOUT 53 YEARS
RESIDING AT FLAT 1B
LAZARUS ENCLAVE
15 CAMPBELL ROAD
AUSTIN TOWN
BANGALORE - 560 047.

...PETITIONER

(BY SRI ANANT MANDGI, ADV., A/W
SRI AMIT A MANDGI, ADV.)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ASHOK NAGAR
POLICE STATION, REPRESENTED

Digitally signed
by NANDINI MS

Location: High
Court of
Karnataka

BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001.

2. SHABANA B.S

W/O JOSEPH KEVIN SELVADORAY
AGED MAJOR
RESIDING AT N460/1, 4TH A CROSS
KORAMANAGALA 3RD BLOCK
BANGALORE - 560 034.

... RESPONDENTS

(BY SRI K. NAGESHWARAPPA, HCGP FOR R-1;
SRI RAKSHITH R, ADV., FOR R-2)

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NC: 2024:KHC:30519
CRL.P No. 5930 of 2024

THIS CRL.P IS FILED U/S.438 CR.P.C PRAYING TO ALLOW THIS PETITION AND ORDER THAT IN THE EVENT OF THE ARREST OF THE PETITIONER BY THE RESPONDENT POLICE IN CR.NO.103/2024 FOR OFFENCE P/US/ 506 OF IPC AND SEC.7,8 OF POCSO ACT 2012 THE PETITIONER BE ENLARGED ON BAIL WITH CONNECTION.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused no.1 in Crime No.103/2024 registered by Ashoknagar Police Station, Bengaluru City, for the offences punishable under Sections 7 & 8 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') and Section 506 IPC, is before this Court under Section 438 Cr.PC.
2. Heard the learned Counsel for the parties.
3. FIR in Crime No.103/2024 was registered by Ashoknagar Police Station, Bengaluru City, against the petitioner and another for the aforesaid offences on the basis of the first information dated 02.04.2024 received from respondent no.2 herein who is the mother of the victim girl. Apprehending arrest in the said case, petitioner had filed Crl. Misc. No.3786/2024 before the Court of FTSC-1, Addl. City Civil & Sessions Judge, NC: 2024:KHC:30519 Bengaluru, which was rejected on 06.06.2024. Therefore, petitioner is before this Court.
4. Learned Senior Counsel appearing for the petitioner submits that there are multiple matrimonial disputes pending before various courts between the petitioner and respondent no.2, who is the wife of the petitioner. Petitioner was given visitation rights to meet the victim girl who is his daughter during school vacation. The said order passed by the jurisdictional Court was unsuccessfully challenged by respondent no.2 in W.P.No.23969/2022. Since certain observations were made by this Court while disposing of W.P.No.23969/2022, petitioner had approached the Hon'ble Supreme Court, and the Hon'ble Supreme Court while disposing of the said petition, has held that

observations made by the High Court while disposing of W.P.No.23969/2022 shall not influence the Trial Court in deciding the proceedings before it and the petitioner herein was also given liberty to file application before the Trial Court for modifying the order that was impugned in W.P.No.23969/2022. He submits that subsequently, IA Nos.28, 29 & 30 were filed by the petitioner before the Trial Court in G & WC No.288/2018 with a prayer to NC: 2024:KHC:30519 permit him to speak to the minor child over video call, to grant interim custody of the minor child on every week end, and also to modify the order dated 13.10.2022 passed on IA No.20 in G & WC No.288/2018. which was impugned in W.P.No.23969/2022. He submits that on the basis of false allegations made by respondent no.2, criminal case is now registered against him for the aforesaid offences and the same is initiated not only to harass and coerce him, but also to see that no favourable orders are passed on IA Nos.28, 29 & 30 by the jurisdictional Family Court.

5. Per contra, learned HCGP and the learned Counsel for respondent no.2 have opposed the petition.

6. Learned HCGP submits that the victim girl has made allegations against the petitioner in her statement recorded under Sections 161 & 164 of Cr.PC. He submits that the petitioner has not co-operated with the police for the purpose of investigation.

7. Learned Counsel for respondent no.2 submits that respondent no.2 came to know about the act committed by the petitioner in the year 2022 only after the victim girl informed NC: 2024:KHC:30519 her about the same on 01.04.2024 after she was taught about bad and good touch in her school. He submits that while disposing of W.P.No.23969/2022, this Court has taken note of the allegations made against the petitioner about handing over the child to a stranger known as Vijay who is arrayed as accused no.2 in this case. The observations made by this Court while disposing of W.P.No.23969/2022 has not been expunged by the Hon'ble Supreme Court. He submits that in the event petitioner is enlarged on bail, he is likely to tamper with the prosecution witnesses. He also submits that having regard to the nature of allegations made, custodial interrogation of the petitioner is required.

8. The undisputed facts of the case are, respondent no.2 was earlier married to one Mohammed Iqbal. The said marriage was dissolved in the month of January 2002. From the first marriage, respondent no.2 has a daughter. The marriage of the petitioner with respondent no.2 was performed on 19.08.2005. From the said marriage, they have a girl child (victim) born on 14.01.2014. The relationship between the petitioner and respondent no.2 got strained subsequently, and thereafter, respondent no.2 started residing separately with her children.

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9. Petitioner had filed G & WC No.288/2018 before the jurisdictional Court of Family Judge, seeking custody of his minor child. Petitioner has also filed M.C.No.5570/2018 before the jurisdictional Family Court with a prayer to dissolve his marriage with respondent no.2. Respondent no.2 had filed Crl. Misc. Petition No.65/2021 and Crl. Misc. Petition No.34/2023 against the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for

short, 'D.V.Act'). Petitioner had filed IA No.20 in G & WC No.288/2018 seeking interim custody of the minor child during school vacation. The said application was allowed by the Family Court on 13.10.2022. Respondent no.2 herein had unsuccessfully challenged the said order in W.P.No.23969/2022.

10. While disposing of W.P.No.23969/2022, certain observations were made touching the character of the petitioner, and therefore, petitioner had approached the Hon'ble Supreme Court in Spl. Leave to Appeal (C) No.15638/2023 and while disposing of the said petition, the Hon'ble Supreme Court has held that the observations made by the High Court in W.P.No.23969/2022 shall not influence the NC: 2024:KHC:30519 Trial Court in deciding the proceedings before it and the order passed on IA No.20 by the Trial Court was directed to be continued till the pendency of the proceedings in G & WC No.288/2018 before the Family Court or till the Family Court passes any orders on the applications that may be filed by either of the parties seeking modification of the said order. Thereafter, the petitioner had filed IA No.30 to modify the order dated 13.10.2022 passed on IA No.20 in G & WC No.288/2018 and also had filed IA Nos.28 & 29 with a prayer to permit him to speak to the minor child over video call, and to grant interim custody of the minor child on every week end, respectively. The said applications were filed on 06.03.2024. Objections were filed to the said applications by respondent no.2 on 08.04.2024.

11. Though the first information in Crime No.103/2024 was submitted by respondent no.2 before the police on 02.04.2024 itself, in her objections filed to IA Nos.28, 29 & 30, she had not mentioned anything about she filing criminal case against the petitioner or about the victim girl informing her about the alleged act committed by the petitioner in the year 2022.

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12. Respondent no.2 has made an allegation in the first information that she was informed by her minor daughter on 01.04.2024 that petitioner herein during the period from 30.04.2022 to 27.05.2022, when the victim was in his interim custody as per the orders of the Family Court, had given bath to his minor daughter and had touched and pinched her inappropriately.

13. The material on record would go to show that the annual examination of the victim girl was held from 18.03.2024 to 26.03.2024, and thereafter, the school was closed for summer holidays. In the first information, it is alleged that on 01.04.2024 when the victim girl had gone to the school, she was taught about good and bad touch in her school, and thereafter, she came and informed the first informant about the alleged act committed by the petitioner in the year 2022. Therefore, a doubt arises with regard to the allegations found in the first information, more so for the reason that the first information was submitted after the petitioner had filed applications - IA Nos.28, 29 & 30 before the Family Court in G & WC.No.288/2018.

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14. Offences punishable under the POCSO Act are of serious in nature and under Section 29 of the POCSO Act, there is a presumption available to the prosecution. Petitioner in furtherance of his

contention that the allegations made against him are false and motivated, has placed certain material before this Court in support of his contentions which at this stage, *prima facie* rebuts the available presumption. At the stage of considering the bail application, court is not required to hold a mini trial. Presumption in criminal law can be raised only when certain foundational facts are clearly established by the prosecution.

15. The Hon'ble Supreme Court in the case of SUBHASH KASINATH MAHAJAN (DR.) VS STATE OF MAHARASHTRA & ANOTHER - (2018)6 SCC 454, while considering the issue of reverse burden vis-à-vis the human rights of an accused, in paragraph 65, has observed as under:

"65. Presumption of innocence is a human right. No doubt, placing of burden of proof on the accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or court. In *Noor Aga v. State of*

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NC: 2024:KHC:30519 Punjab [*Noor Aga v. State of Punjab, (2008) 16 SCC 417*] it was observed:

"33. Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).

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35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld.

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43. The issue of reverse burden vis-à-vis the human rights regime must also be noticed. The approach of the

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NC: 2024:KHC:30519 common law is that it is the duty of the prosecution to prove a person guilty. Indisputably, this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the court where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See "The Presumption of Innocence in English Criminal Law" [The Presumption of Innocence in English Criminal Law, 1996 Crim L Rev 306 at p. 309].)

44. In Article 11(1) of the Universal Declaration of Human Rights (1948) it is stated:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law...."

Similar provisions have been made in Article 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Article 14.2 of the International Covenant on Civil and Political Rights (1966).

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47. We may notice that Sachs, J. in State v. Coetzee [State v. Coetzee, 1997 SCC OnLine ZACC 2 : (1997) 2

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NC: 2024:KHC:30519 LRC 593] explained the significance of the presumption of innocence in the following terms:

"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book. ... Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be

used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption ... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases.'

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NC: 2024:KHC:30519 In view of the above, an accused is certainly entitled to show to the court, if he apprehends arrest, that case of the complainant was motivated. If it can be so shown there is no reason that the court is not able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly."

16. In the case of JASEER ABOOBACKER VS STATE OF KERALA - ILR 2019 KERALA 362, the High Court of Kerala in almost similar circumstances, wherein FIR was registered against the father for the offences punishable under Sections 9 & 10 of the POCSO Act, while granting anticipatory bail to the accused, in paragraphs 9 & 10, has observed as under:

"9. As held in Dr. Subhash Kasinath Mahajan (supra), an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was falsely motivated. If there are materials which prima facie show that the complaint is motivated for extraneous reasons, there is no reason why the court should not protect the person, who has been wrongfully accused from being arrested and detained.

10. It is evident from the prosecution records that the parents of the child are well educated and well-

placed in life. Their only son is of tender age. It appears that the child has been made a weapon of choice by one of the parent to put up a fight against the other parent.

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NC: 2024:KHC:30519 There cannot be any doubt that their unusual fight and the levelling of very grave allegations of sexual abuse against the father would have a huge emotional toll on the psyche of the minor child. It is appalling to note that the parents, in their determination to fight with each other, have intentionally or otherwise failed to protect their child from the damaging emotional consequences that would be caused to him."

17. Having regard to the material available on record and taking into consideration the timing of the first information lodged by respondent no.2, it cannot be said that there is absolutely no merit in the contentions put forward on behalf of the petitioner. In their quest to fight the legal battle concerning their matrimonial dispute, the parents are losing sight of the damage caused to their minor children either directly or indirectly. The young mind of the minor child is filled with animosity as a result of continuous tutoring by the parent, and the child who is totally unaware of the consequences is being

used as a tool to pursue their egoist fight. The Special Courts trying POCSO cases, are therefore, required to be vigilant whilst considering allegations of sexual abuse of the minor child by a parent, more so where such allegation is made by the parent who has been fighting matrimonial cases and child

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NC: 2024:KHC:30519 custody cases before the courts. It is rather unfortunate that more and more cases of this nature are registered where the parents are educated people. The consequences of prosecuting a person for the offences under the POCSO Act are very serious and apart from providing for stringent punishment, the person who is prosecuted comes down in the eyes of the society, family members, relatives, friends, and virtually he is shunned from the society. Therefore, Section 22 of the POCSO Act has to be strictly invoked whenever courts come across false cases registered against any person under the provisions of the POCSO Act.

18. The High Court of Kerala in the case of XXX Vs STATE OF KERALA - 2023(2) KHC 339, in paragraph 19 has observed as under:

"19. In the aforesaid decision, this Court highlighted the growing tendency of foisting false cases against the biological father alleging sexual abuse misusing the provisions of the POCSO Act. This Court alerted the Family Courts by emphasizing the necessity to adopt a conscious approach while dealing with the allegation of offences under the POCSO Act in cases where the custody of the child is under serious litigation. The courts, while dealing with

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NC: 2024:KHC:30519 the applications for bail, involving the offences of the POCSO Act, allegedly committed by the accused against their children, should take a very cautious approach, particularly when the custody of the child is under serious litigation between the parents. In such cases, when the materials placed before the court evoke a reasonable suspicion as to the veracity of the allegations, the courts should not hesitate to invoke the powers under section 438 of the Cr.P.C. What is at stake is someone's personal liberty, integrity, dignity and sometimes, the life itself. The power under section 438 is an important tool for the court to protect the personal liberty of the persons, which is one of the fundamental rights guaranteed under the Constitution of India."

19. Petitioner is a B.Tech Graduate working in a reputable organization known as 'M/s. Northern Operating Services' and he is fighting the legal battle with his wife for several years before different courts and the interim custody of the child was given to him right from the year 2022 onwards. But, there was no complaint whatsoever at any stage against him and it is only when applications seeking modification of the earlier order of custody were filed and also seeking interim relief to speak to the minor child on video call and interim custody of minor child

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NC: 2024:KHC:30519 on every week end was sought, the present criminal case has been registered. The maximum punishment for the alleged offences is imprisonment for a period of five years. Considering the nature of allegations made in the first information, I am of the view that custodial interrogation of the petitioner may not be necessary. Petitioner has undertaken to co-operate with the police for the purpose of investigation. Under the circumstances, I am of the opinion that the prayer made by the petitioner in this petition needs to be answered affirmatively. Accordingly, the following order:

20. The petition is allowed. The respondent - Police or any other police in the State of Karnataka are directed to release the petitioner in the event of his arrest in Crime No.103/2024 registered by Ashoknagar Police Station, Bengaluru City, for the offences punishable under Sections 7 & 8 of the Protection of Children From Sexual Offences Act, 2012 and Section 506 IPC, subject to the following conditions:

1. The Petitioner shall appear before the Investigating Officer within seven days from the date of receipt of the copy of this order and shall execute a personal bond for a sum of

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NC: 2024:KHC:30519 Rs.1,00,000/- with two sureties for the likesum to the satisfaction of the investigating officer.

2. Petitioner shall regularly appear before the Trial Court without fail unless exempted by the Trial Court for valid reasons.

3. Petitioner shall not directly or indirectly tamper with the prosecution witness and he shall co-operate with the police for investigation and appear before them whenever called upon.

Sd/-

(S VISHWAJITH SHETTY) JUDGE KK

Ketolira P Somanna vs State Of Karnataka on 25 July, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 55534 OF 2013 (KLR-RES)
C/W
WRIT PETITION NO. 27143 OF 2013 (KLR-RR/SUR)
WRIT PETITION NO. 27144 OF 2013 (KLR-RR/SUR)

WRIT PETITION NO. 38470 OF 2013 (KLR-RES)

IN W.P.NO.55534/2013
BETWEEN

1. BRIGADIER MALETIRA A DEVAIAH (RETD.)
AGED ABOUT 63 YEARS
FLAT NO. 536, JALAVAYU TOWERS
NGEF LAYOUT, INDIRA NAGAR POST
BANGALORE-560038

Digitally signed
by
NARAYANAPPA
LAKSHMAMMA

2. MR CHAPPANDA K NANAIAH
AGED ABOUT 68 YEARS

Location: HIGH
COURT OF
KARNATAKA

KOLATHODU, BYGODU VILLAGE
HATHUR POST
KODAGU-571218

3. COLONEL KALENGADA M GANAPATHY
AGED ABOUT 58 YEARS
A-102 MALAPRABHA
NATIONAL GAMES VILLAGE
KORAMANGALA
BANGALORE-560047

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013

WP No. 27144 of 2013

AND 1 OTHER

4. MR BATTIYANDA A JAGADEESH

AGED 49 YEARS

NARIYANDAD VILLGE

CHEYANDANE POST

VIRAJPET

SOUTH COORG-571218

5. MR PALANGANDA T BOPANNA

AGED ABOUT 63 YEARS

144/1, THIRD CROSS, BYRASANDRA ROAD,

JAYANAGAR 1STBLOCK EAST

BANGALORE-560011

6. BALLACHANDA A NANAYYA

AGED ABOUT 73 YEARS

DECHOOR

MADIKERI-571201

7. BOLLARPANDA K BOPANNA

AGED ABOUT 29 YEARS

BEGUR VILLAGE

KARGUNDA POST

MADIKERI TALUK

KODAGU-571201

8. PATTAMADA I KALAPPA

AGED ABOUT 82 YEARS

CHARAMBANE POST

MADIKERI

KODAGU-571201

9. IMUDIANDA P CARIAPPA

AGED ABOUT 73 YEARS

SURLABE VILLAGE POST

SOMAVARPET TALUK

KODAGU-571274

10. PULLIANDA B CHINAPPA

AGED ABOUT 63 YEARS

MAGULLA VILLAGE

IMANGALA POST

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NC: 2024:KHC:29383

WP No. 55534 of 2013

C/W WP No. 27143 of 2013

WP No. 27144 of 2013

AND 1 OTHER

VIRAJPET
SOUTH KODAGU-571218

11. MACHIMANDA C APPACHU
AGED 66 YEARS
KAVADI VILLAGE
AMATHI POST
SOUTH KODAGU-571218
12. MACHETTIRA K MONAPPA
AGED 70 YEARS
NO.2637 (17/B) 36TH A CROSS
9THBLOCK, JAYANAGAR
BANGALORE-5600069
13. KARTHAMADA M POONACHA
AGED 60 YEARS
BIRUNANI VILLAGE & PO
VIRAJPET
S COORG-571215
14. MALACHIRA P SOMAIAH
AGED 59 YEARS
NALLOR VILLAGE
KIRGOOR POST
KODAGU-571215
15. KUTTANDA M CHENGAPPA
AGED 65 YEARS
C/O K M IYAPPA
SITA NIVAS
AMMATHI TOWN AND POST
KODAGU-571211
16. CHETTRUMADA M POONACHA
AGED 62 YEARS
NALOOR VILL
KIRGOOR PO
S KODAGU-571215
17. KAMBANDA M JAGADESH

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

AGED 53 YEARS
BETOLI VILLAGE & PO

VIRAJPET
KODAGU-571215

18. ALARANDA B MADAPPA
AGED ABOUT 31 YEARS
NALADI VILL
KAKABE PO
MADIKERI
KODAGU-571218

19. KAMBEYANDA M NANJAPPA
AGED ABOUT 42 YEARS
KUNJILA VILLAGE
KAKABE PO-571212

20. ALLAYANDA S AIYAPPA
AGED ABOUT 52 YEARS
NALADI VILLA ,KAKABE PO
MADIKERI
KODAGU-571212

21. PATAMADA U AIYAPPA
AGED 28 YEARS
S/O SANNA PULIKOT PO & VILL
IYAGERI, MADIKERI
KODAGU-571212

22. BACIMANDA P CHINAPPA
AGED 36 YEARS
KAKABE PO
KUNJLA VILLAGE
MADIKERI
KODAGU-571212

23. MARCHANDA K THIMMAIAH
AGED ABOUT 56 YEARS
MARNDODA VILL & P O
YAVAKAPADI-571212

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NC: 2024:KHC:29383
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AND 1 OTHER

24. BOLLAJIRA B AIYANNA
AGED ABOUT 31 YEARS
K BADAGA, FMKMC COLLEGE POST
MADIKERI-571201

25. AMMATANDA E MEDAPPA
AGED 29 YEARS

- HAKATHUR VILL & POST
MADIKERI-571201
26. MACHAMADA K RAMESH
AGED ABOUT 56 YEARS
TAVALAGIRI VILLAGE
T SHETTIGERI POST
VIRAJPET
KODAGU-571218
27. MANNERA B NANJAPPA
AGED ABOUT 64 YEARS
HARIHARA VILL & POST VIRAJPET
KODAGU-571218
28. MALCHIRI C ASHOK
AGED ABOUT 52 YEARS
AIYAPPA TEMPLE ROAD
PONNAMPET
VIRAJPET
KODAGU-561218
29. KOTRANGADA N MANU SOMAIAH
AGED ABOUT 51 YEARS
KAMATAKERI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
30. AJJAMADA A SUBRAMANI
AGED ABOUT 48 YEARS
KURCHI VILLAGE
SRIMANGALA POST
VIRAJPET
KODAGU-561218
31. BADMANA D LAVA
AGED ABOUT 41 YEARS
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- NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER
- WEST NEMMALE
VIRAJPET
KODAGU-561218
32. HOTTENGADA R SOMANNA
AGED ABOUT 34 YEARS
HYSODULUR VILLAGE
HUDIKERI POST
VIRAJPET
KODAGU-561218
33. PUTHARIRA T KALAIAH
AGED 36 YEARS
CHETHALI VILLAGE AND POST

MADIKERI
KOKDAGU-561201
34. BALLEYADA G PRAKASH
AGED 32 YEARS
NAPOKULU VILL & POST
MADIKERI
KODAGU-561201
35. KORAVANDA C DEVAIAH
AGED ABOUT 30 YEARS
KADAGADAL VILL & PO
MADIKERI
KODAGU-561201
36. CHENDANDA C DEVAIAH
AGED 69 YEARS
BALGODU VILLAGE
BITANGALA POST
KODAGU DISTRICT-571218
37. THABBANGADA S CHITTIAPPA
AGED 68 YEARS
THAVALEGERI VILLAGE
T SHETTIGERI PO
VIRAJPET
SOUTH KODAGU-571218

...PETITIONERS

(BY SMT: SAROJINI MUTHANNA., ADVOCATE)

AND:

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NC: 2024:KHC:29383
WP No. 55534 of 2013
C/W WP No. 27143 of 2013
WP No. 27144 of 2013
AND 1 OTHER

- 1 . STATE OF KARNATAKA
REP BY IT SECRETARY
DEPARTMENT OF REVENUE
VIDHAN SOUDHA
BANGALORE - 1
- 2 . SECRETARY TO GOVERNMENT
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION
VIDHAN SOUDHA
BANGALORE - 1
- 3 . DEPUTY COMMISSIONER
MADIKERI,
KODAGU 571 201

...RESPONDENTS

(BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KOLATHANDA U RAGU MACHAIH AGED ABOUT 58 YEARS SECOND RUDRAGUPPE VILLAGE KANDANGALA POST VIRAJPET TALUK KODAGU 571 218 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A NOTIFICATION NO. SAMYASHEE 53 SHASANA 2011, BANGALORE DT.1.2.2013 AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN SRI KIMMUDIRA A RAVI CHENGAPPA AGED ABOUT 50 YEARS MADENAD VILLAGE & PO MADIKERE TALUK KODAGU-571201 ...PETITIONER (BY SMT: SAROJINI MUTHANNA., ADVOCATE) NC: 2024:KHC:29383 AND 1 OTHER AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011 ANNX-

A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC. BETWEEN 1 . KETOLIRA P SOMANNA AGED ABOUT 51 YEARS YAVAKAPADI VILLAGE & PO MADIKERI, KODAGU-571212 2 . PANDANDA J. NARESH AGED ABOUT 50 YEARS

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NC: 2024:KHC:29383 AND 1 OTHER YAVAKAPADI VILLAGE & POST, MADIKERI, KODAGU-571212 3 . KALIYANDA A. AIYAPPA AGED ABOUT 35 YEARS KAKABE VILLAGE & P.O. MADIKERI KODAGU-57212 4 . MANAVATIRA SUNNY POOVAIAH AGED ABOUT 46 YEARS F2, CRESCENT OPULNET, 12THCROSS, 13THMAIN, BTM,2NDSTAGE, BANGALORE-76

...PETITIONERS (BY SMT: SAROJINI MUTHANNA., ADVOCATE) AND:

1 . STATE OF KARNATAKA REP BY IT SECRETARY DEPARTMENT OF REVENUE VIDHAN SOUDHA BANGALORE - 1 2 . SECRETARY TO GOVERNMENT DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION VIDHAN SOUDHA BANGALORE - 1 3 . DEPUTY COMMISSIONER MADIKERI, KODAGU 571 201 ...RESPONDENTS (BY SMT. SARITHA KULKARNI., HCGP A/W SRI. VIKRAM HUILGOL., AAG) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE IMPUGNED KARNATAKA LAND REVENUE (THIRD AMENDMENT) ACT, 2011

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NC: 2024:KHC:29383 AND 1 OTHER ANNEX-A AS ULTRAVIRES THE CONSTITUTION AND THEREBY VOID AND ISSUE A WRIT IN THE NATURE OF MANDAMUS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ CAV ORDER

1. The Petitioner in W.P.No.55534/2013 is before this Court seeking for the following reliefs:

a. Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.

b. Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.

c. Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records. d. Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.

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NC: 2024:KHC:29383 AND 1 OTHER e. Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

f. Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

2. The petitioner in W.P.No.27143/2013 is before this Court seeking for the following reliefs:

- a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013 as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
- b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
- c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.
- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma-Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.

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NC: 2024:KHC:29383 AND 1 OTHER

f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

3. The Petitioner in W.P.No.27144/2013 is before this Court seeking for the following reliefs:

- a) Declare the impugned Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
- b) Direct the Respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
- c) Direct the Respondents to refrain from asking holders of Jamma bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.

- d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
- e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
- f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

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NC: 2024:KHC:29383 AND 1 OTHER

- 4. The Petitioner in W.P.No.38470/2013 is before this Court seeking for the following reliefs:
 - a) Declare the impugned The Karnataka Land Revenue (Third Amendment) Act, 2011 Annex-A as ultra-vires the constitution and thereby void and issue a writ in the nature of mandamus.
 - b) Direct the respondents & its officers not to enforce or give effect to the provisions of the impugned Amendment Act Annex-A Notification No. Samyashee 53 Shasana 2011, Bangalore dt.1.2.2013.
 - c) Direct the respondents to refrain from asking holders of Jamma Bane lands to obtain partition deeds of their ancestral joint family properties in order to include their names as occupants in the revenue records.
 - d) Direct the respondents to administer the customary laws applicable to the privileged Jamma Wargs and Bane lands irrespective of whether it is alienated or unalienated, privileged in Kodagu district.
 - e) Declare the holders of Jamma Bane whether alienated or unalienated, privileged or unprivileged being part of their Sannads as owner occupants of the Banes.
 - f) Any other order/orders or direction as this Hon'ble Court deems fit in the nature and circumstances of the case in the interest of justice.

- 5. The Petitioners belong to the Kodava race (Coorg race). They claim to represent their respective Okka or joint family as shareholders of the joint family

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NC: 2024:KHC:29383 AND 1 OTHER properties of their respective clan. The lands owned by the joint family are customary privileged Jamma land tenures governed by customary laws that prohibit partition and alienation of these traditional lands, which they claim to be peculiar to the Coorgis/Kodava race.

6. The Petitioners are aggrieved by the Karnataka Land Revenue (III) Amendment Act 2011, by virtue of which an explanation is added to Subsection (20) of Section 2 of the KLR Act as under:

(20) "Occupant" means a holder in actual possession of unalienated land other than the tenant:

Provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Explanation.--A ryotwari pattadar in the Mangalore and Kollegal Area and Bellary District, a pattadar or shikmidar in the Gulbarga Area and a holder or land-holder including Jamma Bane privileged and un-privileged, Umbli land in the Coorg District shall be deemed to be an occupant of such land for purposes of this Act.

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NC: 2024:KHC:29383 AND 1 OTHER

7. Further amendment is made to Section 80 of the KLR Act where after the words "wherever situate" the following words are added "including unalienated Jamma Bane land held by the occupant in Coorg district" which after amendment reads as under:

80. All land liable to pay land revenue, unless specially exempted.--All land, whether applied to agricultural or other purposes and wherever situate, including un-alienated Jamma Bane land held by the occupant in Coorg District, is liable to the payment of land revenue to the State Government according to the provisions of this Act, except such as may be wholly exempted under the provisions of any special contract with the Government or any provision of this Act or any other law for the time being in force.

Provided that the State Government may, by notification or order and subject to such conditions if any, as may be specified therein, for reasons to be recorded in writing, exempt either prospectively or retrospectively any class of lands in any area or areas or any part thereof from the payment of land revenue.

8. The Petitioners claim that these two amendments would disrupt the Kodava joint family, in furtherance of such amendment, the Revenue authorities are insisting the joint family members furnish a partition

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NC: 2024:KHC:29383 AND 1 OTHER deed for the purpose of entry of their name in the revenue records as 'Occupant', thereby forcing the joint family to execute a partition deed, when in fact they do not intend to do so. Such a demand is contrary to the customary and religious practice of the Kodava race and it is in that background that the Petitioners have filed the above petitions challenging the amendment.

9. Smt. Sarojini Muthanna, Learned Counsel for the Petitioners would submit that, 9.1. The amendments made are ultra vires the constitution thereby void. Prior to the amendments being made, the names of all members of the family were entered in the revenue records in the 9th column. After the amendment, the revenue authorities are seeking for a partition deed, as also a 11-E sketch demarcating the share of the person

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NC: 2024:KHC:29383 AND 1 OTHER who wants his name to be entered in the revenue records. Failure to furnish the above has resulted in not entering the names of such family members in the revenue records, thereby constraining and in fact, coercing the Kodava family to execute a partition deed, divide the property by metes and bounds, get a survey sketch done and thereafter place on record the partition deed and 11E sketch, and it is only thereafter that the entry is made in the revenue records.

9.2. Once a partition is executed and entry made in the revenue records, a joint family member who is registered as an occupant is treated as an absolute owner of the property, which has resulted in such occupants transferring the property to third parties, which is opposed to customary laws of Kodavas inasmuch as the properties are required to be retained as a joint

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NC: 2024:KHC:29383 AND 1 OTHER family property for the use and benefit of all members of the joint family. By alienating a portion of the property to third parties, the other members of the family are deprived of the usage of the said property. This is contrary to Section 100 of the KLR Act, which is reproduced hereunder for easy reference:

100. Occupancy not transferable without sanction of prescribed authority nor liable to process of a Civil Court.-- In any case, where an occupancy is not transferable without the previous sanction of the prescribed authority and such sanction has not been granted to a transfer which has been made or ordered by a Civil Court or on which the Court's decree or order is founded,--

(a) such occupancy shall not be liable to the process of any Court and such transfer shall be null and void; and

(b) the Court, on receipt of a certificate under the hand and seal of the Tahsildar, to the effect that any such occupancy is not transferable without the previous sanction of the prescribed authority and that such sanction has not been granted, shall remove the attachment or other process placed on or set aside any sale of or affecting such occupancy.

9.3. She further submits that this is also contrary to the erstwhile Coorg Land Revenue Regulations, 1899 ['CLRR' for short], more particularly

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NC: 2024:KHC:29383 AND 1 OTHER Section 45 and 145, which are reproduced hereunder for easy reference:

45 Summary eviction in case of alienation of certain lands :-

Except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government. 'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

145. Bar of suits in certain matters :-

Except as otherwise provided by this Regulation, no suit shall be brought in any Civil Court in respect of any of the following matters, namely.

- (i) the limits of any land which has been defined by a Revenue Officer as land to which this Regulation does or does not apply;
- (ii) any claim to compel the performance of any duties imposed by this Regulation or by any other enactment for the time being in force or any Revenue Officer as such;
- (iii) any claim to the office or emoluments of parpattigar or Village Officer or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

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NC: 2024:KHC:29383 AND 1 OTHER

- (iv) any notification directing the making or revision of a record-of- rights;
- (v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record;
- (vi) the correction of any entry in a record-of-rights, annual record or register of mutations; (vii) any notification of a general assessment having been sanctioned by the Central Government;
- (viii) the claim of any person as to liability for an assessment of land revenue or of any other revenue under this Regulation;
- (ix) the amount of land revenue to be assessed on any holding under this Regulation;
- (x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Regulation, or any cess, charge or rate to be assessed on any holding under this Regulation or under any other enactment for the time being in force;
- (xi) any claim to hold free of revenue or at favourable rates any land, mills, fisheries or natural products of land or water;
- (xii) any claim connected with or arising out of the collection of the land revenue by the Government or the enforcement by the Government of any process for the recovery thereof;
- (xiii) any claim to set aside on any ground, other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue;
- (xiv) the amount of, or the liability of any person to pay, any fees, fines, costs or other charges imposed under this Regulation;
- (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the

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NC: 2024:KHC:29383 AND 1 OTHER distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

(xvi) any claim arising out of the liability of an assignee of land revenue to pay a share of the cost of collecting or reassessing such revenue. 9.4. The Kodava joint family is forced to do the above, as without the entry of all the names of all the members of the joint family in the revenue records, such a member cannot approach any Bank for crop loan and, more importantly without the name being

entered into in the revenue records, no exemption is given to any member of the Kodava Race in respect of arms licence, for which verification is made upon the entry of their name in the revenue records.

9.5. Each Kodava 'Okka' (family) holding comprises of an 'Aiyne Mane' [main dwelling house] and a 'Kaimada' [temple for ancestors] located in the

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NC: 2024:KHC:29383 AND 1 OTHER said land which belongs to the entire joint family. On all occasions, both auspicious and inauspicious, as also during festivals, prayers are offered at these Kaimadas to their ancestors who are known as 'Karona'. Each and every member of the family is entitled to offer prayers to their ancestors. The Kodavas being ancestor worshippers, an alienation if made, of the land where the Kaimada is located would deprive all family members of their entitlement to ancestral worship, which is an essential practice of the Kodavas.

9.6. Kodavas are a separate ethnic minority having a distinct lifestyle, culture, tradition and custom, which is now upset by the impugned amendment. Apart from an Aiyne Mane and a Kaimada in the common lands, a 'Thutengalas' i.e. family graveyard is maintained. All members of the family are buried in that land

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NC: 2024:KHC:29383 AND 1 OTHER which is also part of the Jamma land. This land was also held in common by the joint family. 9.7. Once partition is effected this land would fall to the share of one particular family member, thus again disrupting the family activities. In the event of the said land being alienated and or the person to whose share this land falls under a partition deed, not permitting other family members to offer their prayers and or worship their elders, the rights of the other family members would be adversely affected. 9.8. Jamma Bane lands are privileged tenures in terms of Rule 164 of the CLRR, their inclusion under Subsection (20) of Section 2 would undo the Kodava customary laws. This aspect had been recognized by the British during their administration of the Coorg area and as such, no member of the joint family can seek or

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NC: 2024:KHC:29383 AND 1 OTHER transfer any land without the consent and concurrence of all other elder members of the family. Furthermore, there was a prohibition in transferring any land outside the patrilineal clan of the family, thus, the transfer was within the clan, safeguarding the interest of all members of the family. Jamma Bane lands were used for the purpose of preparing leaf manure, grazing of cattle, etc. and thus, were used as a part of this warg land (wet land). The manure generated from the Bane lands are used in the warg land, the cattle used to till the wet land would graze in the Bane land, etc. 9.9. Each Kodava family has a family name, which is also called the house name, which is used by each of the members of the family. The owner and/or occupant of the land in Coorg is not an individual member but an abstract family name/house name, and the

other members of

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NC: 2024:KHC:29383 AND 1 OTHER the family are treated as division holders or maintenance division holders who can use the land and the produce made therein for their maintenance.

9.10. The elder of the family is the 'Patedara' in whose name the property is registered by including the Bane land into a regular land, the said Bane land would become amenable to the imposition of tax even though there is no cultivation envisaged as regards the Bane lands. Jamma lands are of two varieties, alienated and unalienated. Alienated Jamma Bane lands were used for cultivation of coffee and unalienated Jamma lands are those attached to a paddy field or warg, sometimes it is called Jamma wargs which are only used for leaf manure and grazing of cattle, there being no cultivation in such lands. Until the amendment, these lands were never taxed by

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NC: 2024:KHC:29383 AND 1 OTHER the British or the Kings or, even after independence, by the Government, it is only now that these lands are sought to be taxed by way of the impugned amendment.

9.11. In this regard she relies upon page 520 of 'the Karnataka State Kodagu District Gazette' by Suryakanth Kamath, which is reproduced hereunder for easy reference:

The real object of enforcing these restrictions is vividly described in a letter to the Government of India dated 12.9.1865 and it was approved by the Government of India. "In regard to sale of Jamma lands, I am prepared to admit its advisability. Many impoverished Coorgs might wish to dispose off their lands (jamma) but I think official sanction to such a step should be withheld as hitherto as I believe it would be fraught with danger to the nationality of Coorgs and the tenure itself, of which the conditions of service are a mani feature, would be abrogated by permitting such land to fall into the hands of Europeans or natives of Mysore from whom a service like that rendered by Coorgs could not be expected".

9.12. She also relied on the publication of 'Land Systems of British India' by B.H. Baden

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NC: 2024:KHC:29383 AND 1 OTHER Powell, more particularly page 475 thereof, which is reproduced hereunder for easy reference:

6. Báné Lands.

(It has already been mentioned that with every holding of jamma land (and the same is true also of ságu land) in Coorg proper, the holder acquires the use of an appurtenant plot of 'báné land that is, a plot of forest land varying (and not always according to the size of the principal holding) from 4 or 5 to 300 acres. It is now, by rule, limited to double the area of the principal holding. The báné is located on the slopes above the valley where the rice- cultivation is, or somewhere near it, and it is destined to supply the warg-holder with grazing, timber, firewood, and above all with bamboos, branches, and herbage, which he burns on the rice- fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural domestic wants of the holder; and if timber, &c., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood. Sandal-wood trees found in báné land are always reserved as the property of Government. In the jamma tenure, as the báné is included in the sanad, it is virtually a part of the property. In the ságu tenure there is no sanad; but the attached area of báné must be held and used subject to the same conditions. Under these circumstances, the báné cannot be regarded as actually the property of the tenure-holder, nor, on the other hand, as land at the disposal of Government. It is rather land which is held as an appendage to a warg or estate, or to a ságu holding, in a sort of trust, or on condition for a certain use.)

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NC: 2024:KHC:29383 AND 1 OTHER Had the báné so remained, there would be nothing more to be said about it. In old days, in Central Coorg at any rate, no one wanted to cut trees for sale, for they had no market value; no one cultivated the báné, beyond raising a few orange or plantain-trees, or ploughing up parts where it was possible to raise a little dry cultivation which was not thought worthy of notice; hence the báné, as an appendage, did not subject the holding to any further revenue- assessment. But in time the land became more valuable, and people began to sell the trees, or what is more, to cultivate coffee. So long as this was done without general clearing, it did little harm; but in time, as larger clearances were made, the utility and natural purpose of the báné were threatened; and moreover the people soon attempted to alienate the land itself, selling or leasing it to coffee- planters; and when this was found profitable, fictitious 'wargs' were imagined and báné applied for under that pretence, and then used for coffee-planting.

The question of preventing these abuses soon arose, and 'báné' rules are now in force as regards assessment. It has for some years been allowed, as a concession, to cultivate coffee on ten acres in the báné without charge; and in 1875 a further concession was made to 'jamma' báné, so that coffee might be cultivated even in excess of ten acres provided that the bushes were planted under the natural forest without removing the large tree. All cultivation in excess of this is assessed. 9.13. Even though the Warg lands are held separately and even though alienated Jamma Bane lands are also held separately, the unalienated

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NC: 2024:KHC:29383 AND 1 OTHER Jamma Bane lands are held jointly and there can be no partition of such unalienated Jamma Bane lands. Her submission is that the privileged Jamma lands or lands of privileged tenants, though are heritable, are not transferable. By effecting a

partition, the very purpose of such privileged tenure is lost. Her submission is that the usage of the word privileged itself is a misnomer and misconstrued. Privilege is not defined under the Act, the word is used very loosely and has undergone changes from time to time. 9.14. Initially Jamma lands were granted to a member of the Coorg race by the then King for the services rendered in the Army by such member of the Coorg race and due to the lands being so granted and being privileged and being of the privileged tenure, the assessment of the said land was also on a reduced basis. She

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NC: 2024:KHC:29383 AND 1 OTHER refers to a Hukumnama issued by the then King regarding one such land and submits that the Jamma right holders paid only half the assessment in terms of the sannad issued by the King.

9.15. Section 45 of the CLRR restricts the sale of the property. The CLRR also provided for retention of the land in the family by not assessing the entire land.

9.16. Even as regards the alienated Jamma land, which is used for coffee plantation, 10 acres of coffee cultivated area was free from assessment and lands only in excess of 10 acres was assessed. Since most Bane lands had remained uncultivated, to encourage cultivation, 10 acres of such Bane lands used for cultivation remained free from assessment.

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NC: 2024:KHC:29383 AND 1 OTHER 9.17. The land used for cultivation was called 'privileged saguvali' and the lands which were not so used continued to be called "Jamma Bane". It is the land which was used for agricultural purposes but was also assessed to tax, those lands were called unprivileged Bane lands, thus the use of the terms 'privileged' and 'unprivileged' was only to indicate whether the land was subject to assessment of tax or not. 9.18. In the year 1974 this exemption from assessment was withdrawn and even privileged Jamma Bane lands were made amenable for full assessment, however the nomenclature of privileged Jamma Bane and unprivileged sagu bane has continued. She submits that this being the distinction, she relies on the Full Bench of this Court in the case of Cheekere Kariyappa Poovaiah -v- State of

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NC: 2024:KHC:29383 AND 1 OTHER Karnataka1, more particularly paras 11, 12, 13, 18, 19 and 22 thereof, which are reproduced hereunder for easy reference:

11. The aforesaid scheme of the Coorg Regulation and the clear picture of different types of Jama Banes which is projected bring-out one salient fact, that in case of privileged or unprivileged Banes which were not alienated and erstwhile Bane holders of such Bane lands continued to have limited privileges qua the Bane lands held by them viz., that they had to use the attached Bane for servicing the holding of the wet land which was held by them on Jama tenure and that he could use this Bane

for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this Bane for aforesaid limited purpose without any liability to pay any land revenue. It is also pertinent to note that in such privileged or unprivileged Bane, the concerned holder had no interest or right in the sub-soil of the Bane as clearly laid-down by Section 47 of the Regulations referred to earlier. He had also no interest in the wood of the trees standing on the Bane save and except taking wood for the limited domestic purposes, and for purposes of agriculture. He had no right to take the wood of trees for any commercial or other purposes unless he has paid the full timber value for cutting such trees, meaning thereby the trees were clearly shown to have been belonging to the Government, the timber of which could not be utilised by Bane holder unless he pays full price for the timber of such trees. This amounted to sale of timber wood by the Government to the concerned Bane holder. Such Banes held on privilege tenure also could not be alienated without paying nazarana as per Rule 167 to the Government.

That also indicated that such Bane holders had no proprietary interest in the land and when they wanted to alienate such privileged Bane lands held by them they had to pay nazarana to the Government apart from obtaining permission from the concerned authority under Section 45 and if that was not done he would be ILR 1993 KAR 2959

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NC: 2024:KHC:29383 AND 1 OTHER liable to be summarily evicted from such Bane, as that would be considered to be a Bane land, land revenue of which was considered to be wholly released. Therefore, on a conjoint reading of Sections 42, 45 and 47(1) of the Regulation and Rule 167 of the Rules framed thereunder, it becomes clear that holder of a Jama Bane land which was not alienated and which was either a privileged Bane or unprivileged Bane, was not proprietor of this Bane. But he had limited privilege as indicated in the definition of Bane found in the Regulation and therefore in the light of Section 42 such unalienated privileged or unprivileged Bane continued to vest in the Government.

12. This conclusion of ours is not in any way whittled down by sub-section 2 of Section 47 of the Regulation as it deals with a situation wherein for exercising any sub-soil rights in Bane lands mentioned in sub-section 1 Section 47, it becomes necessary either for the Government or any person acquiring rights from the Government to acquire any land in the holding or enjoyment of others. Then such land can be acquired under the provisions of Land Acquisition Act, 1894. This sub-section 2 naturally contemplates acquisition of some other lands and not acquisition of Bane lands itself as it continued to remain in the ownership of the Government. Working of sub-section 2 of Section 47 could better be highlighted by an illustration.

13. Supposing unalienated Bane land is held by a person, the sub-soil rights in which belong to Government. The Government enters into a contract with a Contractor permitting him to mine subsoil mineral found in the Bane-land and if such contractor had to approach the Bane land

through the land of somebody else, then to the extent somebody else's land viz., neighbour's land is to be utilised by way of passage for approaching the Bane land, that much portion of the land in possession of the neighbour could be acquired under the Land Acquisition Act, Section 47(2) cannot be read to mean that compensation is to be paid to the holder of unalienated Bane land by acquiring the Bane land as that situation would never arise in view of the fact that Bane land itself remains vested in the State.

18. The aforesaid provisions of 1964 Act clearly show that even after Coorg Regulation was repealed when the 1964 Act came into force, if a holder of Jamma

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NC: 2024:KHC:29383 AND 1 OTHER Bane land, whether privileged or unprivileged was holding the said Jama Bane land in the same condition then his privileges in Jama Bane land which existed earlier viz., utilising this land as an appendage to warg Jama holding for servicing the said warg and for enjoying privilege free of land revenue and also utilising the Bane land, for grazing of his cattle and for supplying leaf manure, fire-wood, timber required for domestic and agricultural purposes of the cultivator so long and he continued in possession of the wet land, were all preserved and continued to remain vested in him even after 1964 Act. That position is exemplified by Section 79 especially sub-section 2 thereof to which we have already made reference. Therefore, the status-quo-ante regarding privileges of Jama Bane land holder qua Jama Bane land as such as existed during the operation of 1899 Regulation continued to operate after 1964 Act but it never got enlarged into full-proprietory ownership of such holders qua their Jama Bane land. On the contrary the right to trees growing on the land which had continued to vest in the Government earlier did not get divested nor did it vest in Jamma Bane holder under 1964 Act and even sub-soil which did not vest in the Jama Bane holder under 1899 Regulation also did not get vested in the Jamma Bane holder. On the other hand as per Section 70 of the Act they all continue to remain vested absolutely in the State Government. We must however add one rider to this position. If, during the time of operation of 1899 Coorg Regulation or even priori thereto, the Jama Bane land had ceased to be a Jama Bane as such and had become an alienated Bane and had got detached from the Service yoke of the warg land to which earlier it was attached and if it was fully assessed, irrespective of the fact whether such separation of the Jamma Bane from the warg land to which it was attached was sanctioned under Rule 136 of the Coorg Rules by Deputy Commissioner or not, and whether any penal assessment was levied on such Jamma Bane holder or not, such Bane land holder could not be said to be having only limited privileges qua such alienated Banes. On the contrary if the Jamma Bane holder was the holder of any alienated Bane on the coming into force of Karnataka Land Revenue Act, 1964, he became an occupant of such fully assessed erstwhile Jamma Bane land and was entitled to all the rights and obligations of an occupant-holder of an unalienated land paying full assessment to the Government and therefore he became an occupant of such land within the meaning of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. In this connection we may also refer to one aspect of the matter which was brought to our notice and on which there cannot be any controversy.

19. During the time when Regulation 1899 was holding the field and even thereafter on many occasions the State of Karnataka acquired the rights of Jamma Bane land holders under Land Acquisition Act. Our attention was invited to the Coorg Gazette of 1956 to show a few samples of such Notifications. One such Notification found at page-39 of the Coorg Gazette refers to Government Notification dated 30-12-1955 seeking to acquire one privileged Jamma Bane land Survey No. 24/1 under the provisions of Land Acquisition Act. Similarly, at page No. 89 is found a Notification dated 2.2.1956 by which certain privileged Jamma Bane lands were sought to be acquired under Section 4(1) of the Land Acquisition Act 1894. Third such Notification is found at page No. 93. It refers to acquisition of privileged Jamma Bane land under Section 4(1) of the Land Acquisition Act. Similarly, such another Notification dated 20-2-1956 is found at page 94 of the Gazette. At page 117 is found a Notification dated 6.3.1956 seeking to acquire privileged Jamma Bane lands under Section 6 of the Land Acquisition Act 1894. Relying on these Notifications it was vehemently contended by learned Counsel for the Petitioners that these acquisition proceedings themselves show that the Government Authorities treated holders of privileged Jamma Bane lands as having proprietary interests, otherwise there would have been no occasion for the Government to acquire these lands. Now, it must be noted that even a privileged Jamma Bane holder had some interest or privilege in the Jamma Bane land though he may not be a full proprietor thereof. As we have noted earlier he had certain privileges flowing from his occupation of privileged Jamma Bane land. This type of privileges would necessarily show some restricted interest in these lands. If the Government wanted to abolish even these privileges and concessions which were otherwise giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under Land Acquisition Act, and obviously compensation was payable to such privileged Jamma Bane holders by evaluating their limited interest and not the full interest as the proprietor. Therefore, from the mere fact that these

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NC: 2024:KHC:29383 AND 1 OTHER privileged bane lands were put to acquisition it cannot be inferred of necessity that holders of such Jamma Bane lands were treated by the Government to be the full owners of such lands. As we have seen earlier except these limited privileges and concessions in privileged Jamma Bane lands they had no right in the sub-soil, they had no ownership of the trees growing thereon. They cannot even cultivate these lands. Therefore, they had merely the right to enter upon the lands to collect the leaves to utilise as manure or for collecting wood for domestic or agricultural purposes and nothing more. This limited privilege or right, if had to be acquired, had to be evaluated and paid for, consequently the acquisition notifications covering these lands would be an equivocal act and cannot be treated to be acknowledging the full proprietary right of privileged jamma bane holders in such lands. It is axiomatic that a full proprietary ownership of land would entitle the owner to be the proprietor of all the sub-soil rights upto the centre of the earth, all surface rights on the land, all the rights in the usufruct of the land, full rights in all the trees standing on the land save except reserve trees and he would be owner of the air-column upto the sky over that land.

Such types of rights were never made available to the privileged or unprivileged Jamma Bane land holder during the time of Britishers after 1834 who administered Coorg nor during the time from 1899 when Coorg Regulation held the field and also never thereafter when 1964 Karnataka Act was enacted.

22. Now the stage is reached for us to have a stock of the situation. The aforesaid discussion regarding the rights of the Bane land holders in the back-ground of the relevant periods during which the Bane tenure existed in erstwhile Coorg State and thereafter leads us to the following conclusions:

(i) So long as Jamma Bane land owner occupied the Bane land as an adjunct of the warg land to which it remained attached, he had a limited interest or right in the said Jamma Bane land, namely, to enjoy the privilege of non-payment or revenue, privilege of grazing his cattle in the land, privilege of taking leaf manure from the leaves of the trees standing on the land for the purpose of supplying it as a manure to its warg land, privilege of taking fire wood and timber fire wood and timber required for his agricultural and domestic purposes.

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NC: 2024:KHC:29383 AND 1 OTHER

(ii) Such privileges enjoyed by the Jamma Bane holder do not entitle him to any sub-soil rights in the Jamma Bane land nor had he any interest of right in the standing trees and he could not utilise these trees for commercial purpose without payment of full timber value to the Government. He was also not the owner of the air column above the surface of the land. If the holder of a privileged Bane land sought to alienate his land he had to follow the procedure laid down by Rule 167 of Coorg Land Regulation 1899, which held the field prior to 1964 and if that was not done, the holder of privileged Jamma Bane land becomes liable to be summarily evicted as per Section 45 of the Coorg Land Regulation 1899, during the time when the said Regulation held the field.

iii) Once such Jamma Bane land ceases to be a Jamma Bane, whether privileged or unprivileged and became an alienated Bane, on the Jamma Bane being detached from the service of the Warg land under the orders of the authorities passed under Rule 136 of the Coorg Rules, the holder of such alienated Bane becomes entitled to cultivate the Bane land as a separate holding on payment of full assessment and his rights and obligations qua such land became that of an occupant of an unalienated fully assessed lands and he became entitled to all the rights and subject to all obligations of holder of such land governed by the provisions of Coorg Regulation of 1899, in the first instance, and later under the Karnataka Land Revenue Act, 1964.

iv) Even if a Jamma Bane holder got his Bane land detached from the warg land by voluntarily putting the land under cultivation of coffee or any other crop, and got it fully assessed and paid such assessment, even if he had not obtained orders of the authorities under Rule 136 of the Coorg Land Revenue Rules, the Bane land held by him had to be treated as alienated Bane and all that he had to

pay to the Government was full assessment as well as penal assessment if any that could be imposed on him and full timber value as laid down by Rule 136(5) of the Rules framed under the Coorg Land Revenue Regulation, 1899, and the alienated Bane held by him was not liable to be forfeited to the Government.

ANSWERS

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NC: 2024:KHC:29383 AND 1 OTHER In view of the aforesaid conclusion to which we have reached, it becomes obvious that the Point No. 1 will have to be answered in the negative by holding that holders of Jamma Bane lands both privileged and unprivileged are not full owners thereof but have limited privileges qua these lands as indicated above, subject to the rider that once these Jama Bane Lands became alienated Bane, the holders of such alienated Bane became entitled to the rights and obligations of occupants of unalienated fully assessed lands and were governed for that purpose by the provisions of the Coorg Land and Revenue Regulations so long as they held the field and thereafter they were entitled to the rights and subject to the obligations of the holder and occupant of unalienated fully assessed lands as per the Karnataka Land Revenue Act, 1964. 9.19. Relying on the above, she submits that the Court has committed an error by holding that the Jamma Bane lands are government lands, but no such claim has been made regarding Sagu Bane lands.

9.20. Rule 164 of the CLRR read with Section 45 and 143(f) and 145(xv) prohibits partition and alienation of privileged land by way of sale, gift, mortgage or release without permission of the Chief Commissioner. The said provisions are reproduced hereunder for easy reference:

45. Summary eviction in case of alienation of certain lands.-Except with the permission of the Assistant

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NC: 2024:KHC:29383 AND 1 OTHER Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands, of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, (and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government.

'Family' for the purpose of this section means and includes direct descendants in the male line of the original grantee of the land.

143 Power to make rules. (f) generally, for carrying out the purposes of this Regulation.] 145 Bar of suits in certain matters. (xv) any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been

wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the distribution of land revenue on partition, or any other question connected therewith, not being a question as to the partibility of, or the title to, the property of which partition is sought.

9.21. On that basis she submits that the distinction between the privileged and unprivileged lands had been done away with in the year 1974, the reference to privileged tenure could only be to those enumerated under Rule 164 of the CLRR. 9.22. She refers to the decision of the Hon'ble Apex Court in the case of Kunnathat Thattehunni

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NC: 2024:KHC:29383 AND 1 OTHER Moopil Nair v. State of Kerala², more particularly paragraphs 7, 8, 9 and 10 thereof which are reproduced hereunder for easy reference:

7. The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional.

For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the Petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on AIR 1961 SC 552 : 1960 INSC 255

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NC: 2024:KHC:29383 AND 1 OTHER everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of

inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution.

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the Petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert.

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NC: 2024:KHC:29383 AND 1 OTHER The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in

Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCR p. 279]. S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pp. 299 and 300 of the Report, the relevant portion of which is in these terms:

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a

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NC: 2024:KHC:29383 AND 1 OTHER discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself". (p. 299 of the Report).

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, Section 4 and Section 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

9. The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(f) of the Constitution, also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5-A is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Article 19(1)(f) of the Constitution. Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed

land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders

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NC: 2024:KHC:29383 AND 1 OTHER may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a landholder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on landholders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment.

10. That the provisions aforesaid of the impugned Act are in their effect confiscatory is clear on their face. Taking the extreme case, the facts of which we have stated in the early part of this judgment, it can be illustrated that the provisions of the Act, without proposing to acquire the privately owned forests in the State of Kerala after satisfying the conditions laid down in Article 31 of the Constitution, have the effect of eliminating the private owners through the machinery of the Act. The petitioner in petition No. 42 of 1958 has been assumed to own 25 thousand acres of forest land. The liability under the Act would thus amount to Rs 50,000 a year, as already demanded from the petitioner on the basis of the provisional assessment under the provisions of Section 5-

A. The petitioner is making an income of Rs 3100 per year out of the forests. Besides, the liability of Rs 50,000 as aforesaid, the petitioner has to pay a levy of Rs 4000 on the surveyed portions of the said forest. Hence, his liability for taxation in respect of his forest land amounts

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NC: 2024:KHC:29383 AND 1 OTHER to Rs 54,000 whereas his annual income for the time being is only Rs 3100 without making any deductions for expenses of management. Unless the petitioner is very enamoured of the property and of the right to hold it, it may be assumed that he will not be in a position to pay the deficit of about Rs 51,000 every year in respect of the forests in his possession. The legal consequences of his making a default in the payment of the aforesaid sum of money will be that the money will be realised by the coercive processes of law. One can, easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold at public auction. In the absence of a bidder forthcoming to bid for the offset amount, the State ordinarily becomes the auction purchaser for the realisation of the outstanding taxes. It is clear, therefore, that apart from being discriminatory and imposing unreasonable restrictions on holding property, the Act is clearly confiscatory in character and effect. It is not even necessary to tear the veil, as was suggested in the course of the argument, to arrive at the conclusion that the Act has that unconstitutional effect. For these reasons, as also for the reasons for which the provisions of Sections 4 and 7 have been declared to be unconstitutional, in view of the provisions of Article 14 of the Constitution, all these operative sections of the Act, namely 4, 5-A and 7, must be held to offend Article 19(1)(f) of the Constitution also.

9.23. Relying on the above, she submits that both the amendment, the object, and the reasons of the Amendment Act are vague, and do not provide any reasons to bring about legislation to change the situation. The KLR Act preserves the rights, privileges, obligations and liability acquired, accrued or incurred under the CLRR, which can

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NC: 2024:KHC:29383 AND 1 OTHER be seen and gathered from Section 202(1)(b) of the KLR Act which is reproduced hereunder for easy reference:

"202(1)(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law;"

9.24. She refers to a decision of the Division bench of this Court in the case of B. Mohammad v. Deputy Commissioner, Mangalore³, more particularly para 28, 29 and 30 thereof, which are reproduced hereunder for easy reference:

28. Four rules are laid down in Heydon's case [(1584) 3 Co. Rep 7a.] in the matter of Interpretation of statutes. They are:

1. What was the Common law before the making of the Act:

2. What was the defect and mischief for which the Common law did not provide;

3. What remedy the Parliament has resolved and appointed to cure the defect;

4. The true reason of the remedy.

29. These principles have gained acceptance in various judicial pronouncements. The object of Rule 29A has to be understood keeping in mind the abovesaid rules.

(1998) 6 Kant LJ 30

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NC: 2024:KHC:29383 AND 1 OTHER Rule 29a was enacted to prevent a specific mischief noticed by the Legislature. If we follow what is stated in para 72 of Laxmamma's case [1983 (1) K.L.J. 417], then undoubtedly the object of Rule 29A would be defeated. It was never the intention of the rule makers to permit a grantee of a government land to alienate the grant even to the members of the Scheduled Caste/Tribe on and after 17.10.1974. There was no statutory recognition of such right hitherto, and by means of the Rule, such a condition imposed in any grant at the time of the grant was done away with. The legislature was of the view that these grantees are members of the weaker sections of the society; that they are exploited classes; that special statutory protection is needed to safeguard their interest; that land was granted to landless people and if alienation is allowed unchecked, then the object of the very grant would be defeated; that these persons should not be persons without any land even to erect a homestead. Act 2 of 1979 and its precursor Rule 29A were legislated with intention to achieve the above objects. Therefore, any interpretation to be placed to the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interest.

30. Therefore, the opinion of the Bench in respect of the questions framed is as follows:

(1) No; Rule 29A is not deemed to have been obliterated from backdate (retrospectively) in view of Section 4 and 11 of Karnataka Act 2 of 1979.

(2) In view of Rule 29A of the rule referred to supra, clause 12 of the condition referred to above continued to exist as modified.

(3) on and after 17.10.1974 i.e., the date with effect from which date Rule 29A was introduced and till 1.1.1979 the date of coming into force of Act 2 of 1979 referred to above, all transactions were subject to the said Rule 29A.

9.25. She submits that the amendment now made is contrary to both the CLRR and KLR Act. The

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NC: 2024:KHC:29383 AND 1 OTHER CLRR and the KLR Act provide for customary laws of Kodavas in Coorg viz., Section 45, 110, 143 and 145 and Rules 97(2), 135, 136, 164 and 167 of CLRR, which are continued in Section 220, 75(1), 79(2), 80, 100, 202(1)(b) and 202(4) of the KLR Act. Any law cannot violate customary laws. The present impugned amendment, being in violation of customary law, falls foul of Article 245 of the Constitution. Article 245 is reproduced hereunder for easy reference:

245. Extent of laws made by Parliament and by the Legislatures of States (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

9.26. The Jamma land tenure is a quasi-feudal tenure requiring payment of only half the revenue

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NC: 2024:KHC:29383 AND 1 OTHER assessment, and the male family members being required to provide military services in return to the King.

9.27. She submits that this Court in a decision in the case of C.A. Nanjappa -v- C.M. Thimaya⁴ has categorically held that Coorgis are governed by the Mitakshara School of Hindu law as modified by Coorg customary law, thereby accepting the existence of Coorg customary laws which would override and/or modify the Mitakshara law. 9.28. She reiterates that the Coorg customary law prohibits partition, alienation and/or division of the family, and in this regard, she relies on Section 107 of Maj.Gen.Rob Cole's 'A Manual of Coorg Civil Law' ['Cole's Manual' for short] which is reproduced hereunder for easy reference:

1963 Mys. LJ 487

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NC: 2024:KHC:29383 AND 1 OTHER

107. Some have claimed that all such coffee estates, however, acquired, should belong to the house, or the member to leave the house and live separately; but the former is opposed to usage and the long established custom of self-acquiring property, and the latter would be tantamount to a division of family which is prohibited.

9.29. She submits that the division of property would tantamount to the division of the family itself.

In this regard, she relies on Sections 189 and 192 of Rob Cole's Manual which are reproduced hereunder for easy reference:

189. What Constitutes division-A member is not to be considered as divided off from the family on the simple execution of a deed or list of partition or on his merely living apart; but he must have taken his share and lived apart.

192. Although the residence and partaking of food may be separate, the family may still be united. The marriages, celebration of the Huti and other feasts, the performance of the funeral rites and must occur in the chief house or family residence if the family be one and undivided. If division has taken place such ceremonies are performed by the divided member in his own residence; and he also selects a separate burial ground. The mode of performing the above ceremonies will therefore be a guide as to whether a family is divided or not.

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NC: 2024:KHC:29383 AND 1 OTHER 9.30. She submits that division of property is not recognized among Kodava/Coorg race. In this regard she relies on the Rob Cole's Manual. By relying on Sections 105 and 211 of Cole's Manual she submits that the Coorgis zealously guarded the right to ancestral property and continued the family name of the Patedara clan. Sections 105, 115 and 211, are reproduced hereunder for easy reference:

105. Mode of acquiring self-property- The mode laid down to be followed in acquiring self-property is worth enquiring into, and will show how jealously the Coorgs have guarded the rights of ancestral property and the law of primogeniture. At the time of ploughing and sowing and of harvesting, all the members of the family are bound to devote their whole time to the ancestral property. At the other seasons the Kikkaruru are only bound to give half the day, morning or afternoon, to the work of the house, and spend the other half as they like.

During such leisure hours, if they cultivate pepper, ginger, turmeric, oranges, plantain etc, and from the profits purchase cattle, pigs, fowl etc, such property is considered self-acquired. If such cultivation be carried on lands belonging to the house, one-tenth of the produce or value thereof has to be given to the house. If one other lands, the whole goes to the Kikkaruru.

115. Alienation not allowed-Division of property is not recognised among Coorgs, and no one can alienate any property landed or personal without the consent of all the members of the family. A father cannot alienate

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NC: 2024:KHC:29383 AND 1 OTHER landed property, whether ancestral or self acquired, without the consent of his sons grandsons"

211. Daughters- The unmarried daughter takes precedence. If there be more than one married daughter, any one may be selected, and a marriage by Mukka purje be adopted, and here descendants would bear the ancestral name and not that of the father. The property cannot be divided amongst the unmarried daughters. This shows how tenacious the Coorg are of the idea of continuing the family name. In the event of all the daughter being married, a son of any of them may be selected to be adopted into and to represent the family becoming extinct. In the event of the absence of those relations whose action in the matter is necessary, the more distant kindred, or the villagers in their absence, may authorise such marriage and adoptions 9.31. Due to the tyrannical rule of Raja Chikkaveera Rajendra, Coorgis turned to the British, who had assured them that the civil and religious rights of the Coorgis shall be respected. Thus, she submits that even the British having recognized the civil and religious usage of the Kodavas, never interfered with the practice thereof, the amendment now made will cause disruption in the civil and religious usages of the Kodavas.

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NC: 2024:KHC:29383 AND 1 OTHER 9.32. She refers to a Book by the name, Kodavas-a Pictorial by B.D. Ganapathy and by referring to page 12, 16, 18, 20, 24, 62 and 82 again reiterates that a Jamma Bane land belongs to a family, has an Aiyne mane, a Kaimada and a Thutengala and all the family members gather on auspicious and inauspicious occasions to offer their prayers.

9.33. The fragmentation of the land on account of partition would also result in commercialization of the land which would lead to the denudation of trees, and the construction of irregular and unauthorized buildings. Thus, she submits that this amendment would act contrary to the requirement of maintaining the ecologically sensitive variation in a proper manner. She submits that this is the reason why there have been landslides in the recent past in the district of Coorg.

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NC: 2024:KHC:29383 AND 1 OTHER 9.34. The custom of Coorg requires to be protected and in this regard she refers to the treatises by Salmond Jurisprudence and submits that the power of customary law is equal to that of statutory law and a custom may not only supplement but also derogate statutory law. On this ground, she submits that the customs which have been practiced by the Kodavas cannot be undone by the impugned amendment. The Kodavas would be entitled to act contrary to the statutory law by following their customs.

9.35. She refers to Article 13 of the Constitution of India which is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (2)The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3)In this article, unless the context otherwise requires-

(a)"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b)"laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4)Nothing in this article shall apply to any amendment of this Constitution made under article 368. 9.36. By referring to clause (2) of Article 13 of the Constitution of India she submits that the State shall not make any law which takes away the rights conferred by Part-III and by referring to clause 3(a) of Article 13 she submits that law includes customs and usage in the territory of India. Thus, she submits that the customs and traditions have the same value as a statutory law in force. There is a restriction/embargo on the State to enact any law contrary to

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NC: 2024:KHC:29383 AND 1 OTHER customary traditions, and even if there is a law enacted, the customs and traditions would prevail over such statutory law.

9.37. The customary law of Kodavas restricts them from alienating the joint family property, there is no individual right for any member of the family in the joint family property. The restriction imposed on such members for alienation is not an absolute restraint inasmuch as a member wishes to sell his share in the property, which has not been delineated, can do so in favour of other members of the joint family, thereby preserving the joint family of the Kodavas. In this regard she relies upon the decision of the Apex Court in the case of Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies

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NC: 2024:KHC:29383 AND 1 OTHER (Urban)5, more particularly para 25, 37, 38, 39, 40, 41, 42 and 44 which are reproduced hereunder for easy reference:

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our

Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Acts prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their bye-laws restricting membership based on their own criteria.

37. In our view, the High Court made a wrong approach to the question of whether a bye-law like Bye-law 7 could 2005 (5) SCC 632 : 2005 INSC 208

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NC: 2024:KHC:29383 AND 1 OTHER be ignored by a member and whether the authorities under the Act and the Court could ignore the same on the basis that it is opposed to public policy being against the constitutional scheme of equality or non-discrimination relating to employment, vocation and such. So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye-law or for interdicting the formation of cooperative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in Gherulal Parakh v. Mahadeodas Maiya [1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it

was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.

39. The appellant Society was formed with the object of providing housing to the members of the Parsi community, a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the cooperative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire

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NC: 2024:KHC:29383 AND 1 OTHER to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognised by the Acts enacted in that behalf concerning the cooperative movement. Even today, we have women's cooperative societies, we have cooperative societies of handicapped persons, we have cooperative societies of labourers and agricultural workers. We have cooperative societies of religious groups who believe in vegetarianism and abhor non-vegetarian food. It will be impermissible, so long as the law stands as it is, to thrust upon the society of those believing in say, vegetarianism, persons who are regular consumers of non-vegetarian food. Maybe, in view of the developments that have taken place in our society and in the context of the constitutional scheme, it is time to legislate or bring about changes in Cooperative Societies Acts regarding the formation of societies based on such a thinking or concept. But that cannot make the formation of a society like the appellant Society or the qualification fixed for membership therein, opposed to public policy or enable the authorities under the Act to intervene and dictate to the society to change its fundamental character.

40. Another ground relied on by the authorities under the Act and the High Court to direct the acceptance of Respondent 3 as a member in the Society is that the bye- law confining membership to a person belonging to the Parsi community and the insistence on Respondent 2 selling the building or the flats therein only to members of the Parsi community who alone are qualified to be members of the Society, would amount to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act. Section 10 of the Transfer of Property Act cannot have any application to transfer of membership. Transfer of membership is regulated by the bye-laws. The bye-laws in that regard are not in challenge and cannot effectively be challenged in view of what we have held above. Section 30 of the Act itself places restriction in that regard. There is no plea of invalidity attached to that provision. Hence, the restriction in that regard cannot be invalidated or ignored by reference to Section 10 of the Transfer of Property Act.

41. Section 10 of the Transfer of Property Act relieves a transferee of immovable property from an absolute

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NC: 2024:KHC:29383 AND 1 OTHER restraint placed on his right to deal with the property in his capacity as an owner thereof. As per Section 10, a condition restraining alienation would be void. The section applies to a case where property is transferred subject to a condition or limitation absolutely restraining the transferee from parting with his interest in the property. For making such a condition invalid, the restraint must be an absolute restraint. It must be a restraint imposed while the property is being transferred to the transferee. Here, Respondent 2 became a member of the Society on the death of his father. He subscribed to the bye-laws. He accepted Section 30 of the Act and the other restrictions placed on a member. Respondent 2 was qualified to be a member in terms of the bye-laws. His father was also a member of the Society. The allotment of the property was made to Respondent 2 in his capacity as a member. There was really no transfer of property to Respondent 2. He inherited it with the limitations thereon placed by Section 31 of the Act and the bye-laws. His right to become a member depended on his possessing the qualification to become one as per the bye-laws of the Society. He possessed that qualification. The bye-laws provide that he should have the prior consent of the Society for transferring the property or his membership to a person qualified to be a member of the Society. These are restrictions in the interests of the Society and its members and consistent with the object with which the Society was formed. He cannot question that restriction. It is also not possible to say that such a restriction amounts to an absolute restraint on alienation within the meaning of Section 10 of the Transfer of Property Act.

42. The restriction, if any, is a self-imposed restriction. It is a restriction in a compact to which the father of Respondent 2 was a party and to which Respondent 2 voluntarily became a party. It is difficult to postulate that such a qualified freedom to transfer a property accepted by a person voluntarily, would attract Section 10 of the Act. Moreover, it is not as if it is an absolute restraint on alienation. Respondent 2 has the right to transfer the property to a person who is qualified to be a member of the Society as per its bye-laws. At best, it is a partial restraint on alienation. Such partial restraints are valid if imposed in a family settlement, partition or compromise of disputed claims. This is clear from the decision of the Privy Council in Mohd. Raza v. Abbas Bandi Bibi [(1932) 59 IA 236 : AIR 1932 PC 158] and also from the decision of the Supreme Court in Gummanna Shetty v.

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NC: 2024:KHC:29383 AND 1 OTHER Nagaveniamma [(1967) 3 SCR 932 : AIR 1967 SC 1595] . So, when a person accepts membership in a cooperative society by submitting himself to its bye-laws and secures an allotment of a plot of land or a building in terms of the bye-laws and places on himself a qualified restriction in his right to transfer the property by stipulating that the same would be transferred back to the society or with the prior consent of the society to a person qualified to be a member of the society, it cannot be held to be an absolute restraint on alienation offending Section 10 of the Transfer of Property Act. He has placed that restriction on himself in the interests of the collective body, the society. He has voluntarily submerged his rights in that of the society.

44. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by Respondent 2 only in terms of the bye-laws of the Society and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its bye-laws. The direction given by the authority to the appellant to admit Respondent 3 as a member is set aside. Respondent 3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by Respondent 2 in disregard of the bye-laws of the Society and without the prior consent of the Society.

9.38. She also relies upon a decision in The Kerala Education Bill, 1957. vs Unknown6, more particularly paras 15, 19, 20, 21 and 41, which are reproduced hereunder for easy reference:

15. The true meaning, scope and effect of Art. 14 of our Constitution have been the subject-matter of discussion and decision by this Court in a number of cases beginning with the case of Chiranjit Lal Chowdhuri v. The Union of India and others ([1950] S.C.R. 869). In Budhan Choudhry v. The State of AIR 1958 SC 956 : 1958 INSC 64

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NC: 2024:KHC:29383 AND 1 OTHER Bihar a Constitution Bench of seven Judges of this Court explained the true meaning and scope of that Article. Recently in the case of Ram Krishna Dalmia and others v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279), the position was reviewed at length by this Court by its judgment delivered on March 28, 1958, and the several principles firmly established by the decisions of this Court were set out seriatim in that judgment. The position was again summarised in the still more recent case of Mohd. Hanif Quareshi v. The State of Bihar ([1959] S.C.R. 629), in the following words :-

"The meaning, scope and effect of Art. 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjit Lal Chowdhury v. The Union of India ([1950] S.C.R. 869) and ending with the recent case of Ram Krishna Dalmia v. Sri Justice S. R. Tendolkar ([1959] S.C.R. 279). It is now well-established that while Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the

burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may continue its restrictions to those cases where the need is deemed

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NC: 2024:KHC:29383 AND 1 OTHER to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In the judgment of this Court in Ram Krishna Dalmia's case ([1959] S.C.R. 279) the statutes that came up for consideration before this Court were classified into five several categories as enumerated therein. No useful purpose will be served by re-opening the discussion and, indeed, no attempt has been made in, that behalf by learned counsel. We, therefore, proceed to examine the impugned provisions in the light of the aforesaid principles enunciated by this Court.

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in Biswambar Singh v. The State of Orissa ([1954] S.C.R. 842, 855) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under clause 3(2) can be exercised only "for the purpose of providing facilities for general education, special education and for the training of teachers". It is "for the purpose of providing such facilities" that the

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NC: 2024:KHC:29383 AND 1 OTHER three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose. It is true that the word "may" has been used in sub-clause (3), but, according to the well known rule of construction of statutes, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the Government will be under an obligation to exercise its discretion in furtherance of such purpose and no question of the arbitrary exercise of discretion can arise. [Compare Julius v. Lord Bishop of Oxford ([1880] 5 app. Cas 214)]. If in actual fact any discrimination is made by the Government then such discrimination will be in violation of the policy and principle deducible from the said Bill itself and the court will then strike down not the provisions of the Bill but the discriminatory act of the Government. Passing on to clause 14, we find that the power conferred thereby on the Government is to be exercised only if it appears to the Government that the manager of any aided school has neglected to perform the duties imposed on him and that the exercise of the power is necessary in public interest. Here again the principle is indicated and no arbitrary or unguided power has been delegated to the Government. Likewise the power, under clause 15(1) can be exercised only if the Government is satisfied that it is necessary to exercise it for "standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing the education of any category under their direct control" and above all the exercise of the power is necessary "in the public interest". Whether the purposes are good or bad is a question of State policy with the merit of which we are not concerned in the present discussion. All that we are now endeavouring to point out is that the clause under consideration does lay down a policy for the

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NC: 2024:KHC:29383 AND 1 OTHER guidance of the Government in the matter of the exercise of the very wide power conferred on it by that clause. The exercise of the power is also controlled by the proviso that no notification under that sub-clause shall be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly - a proviso which clearly indicates that the power cannot be exercised by the Government at its whim or pleasure. Skipping over a few clauses, we come to clause 36. The power given to the Government by clause 36 to make rules is expressly stated to be exercised "for the purpose of carrying into effect the provisions of this Act". In other words, the rules to be framed must implement the policy and purpose laid down in its long title and the preamble and the provisions of the other clauses of the said Bill. Further, under clause 37 the rules have to be laid for not less than 14 days before the Legislative Assembly as soon as possible after they are made and are to be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid. After the rules are laid before the Legislative Assembly they may be altered or amended and it is then that the rules, as amended become effective. If no amendments are made the rules come into operation after the period of 14 days

expires. Even in this latter event the rules owe their efficacy to the tacit assent of the Legislative Assembly itself. Learned counsel appearing for the State of Kerala submitted in picturesque language that here was what could be properly said to be legislation at two stages and the measure that will finally emerge consisting of the Bill and the rules with or without amendment will represent the voice of the Legislative Assembly itself and, therefore, it cannot be said that an unguided and uncontrolled power of legislation has been improperly delegated to the Government. Whether in approving the rules laid before it the Legislative Assembly acts as the Legislature of Kerala or acts as the delegate of the Legislature which consists of the Legislative Assembly and the Governor is, in the absence of the standing orders and rules of business of the Kerala Legislative Assembly, more than we can determine. But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including clause 36, the Kerala Legislature has, by clause 15 and clause 37 provided further safeguards. In this connection we must bear in

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NC: 2024:KHC:29383 AND 1 OTHER mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed. For reasons stated above it appears to us that the charge of unconstitutionality of the several clauses which come within the two questions now under consideration founded on Art. 14 cannot be sustained. The position is made even clearer when we consider the question of the validity of clause 15(1) for, apart from the policy and principle deducible from the long title and the preamble of the Bill and from that sub-clause itself, the proviso thereto clearly indicates that the Legislature has not abdicated its function and that while it has conferred on the Government a very wide power for the acquisition of categories of schools it has not only provided that such power can only be exercised for the specific purposes mentioned in the clause itself but has also kept a further and more effective control over the exercise of the power, by requiring that it is to be exercised only if a resolution is passed by the Legislative Assembly authorising the Government to do so. The Bill, in our opinion, comes not within category (iii) mentioned in Ram Krishna Dalmia's case ([1959] S.C.R. 279) as contended by Shri G. S. Pathak but within category

(iv) and if the Government applies the provisions in violation of the policy and principle laid down in the Bill the executive action will come under category (v) but not the Bill and that action will have to be struck down. The result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Art. 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative.

20. Re. Question 2 : Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Art. 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve

the same. It is obvious that a minority

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NC: 2024:KHC:29383 AND 1 OTHER community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

21. As soon as we reach Art. 30(1) learned counsel for the State of Kerala at once poses the question : what is a minority ? That is a term which is not defined in the Constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what ? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union ? The position taken up by the State of Kerala in its statement of case filed herein is as follows:-

"There is yet another aspect of the question that falls for consideration, namely, as to what is a minority under Art. 30(1). The State contends that Christians, a certain section of whom is vociferous in its objection to the Bill on the allegation that it offends Art. 30(1), are not in a minority in the State. It is no doubt true that Christians are not a mathematical majority in the whole State. They constitute about one-fourth of the population; but it does not follow therefrom that they form a minority within the meaning of Art. 30(1). The argument that they do, if pushed to its logical conclusion, would mean that any section of the people forming under fifty per cent. of the population should be classified as a minority and be dealt with as such.

Christians form the second largest community in Kerala State; they form, however, a majority community in certain area of the State. Muslims form the third largest community in the State, about one- seventh of the total population. They also, however, form the majority community in certain other areas of the State. (In I.L.R. (1951) 3 Assam 384, it was held

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NC: 2024:KHC:29383 AND 1 OTHER that persons who are alleged to be a minority must be a minority in the particular region in which the institution involved is situated)."'

The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Art. 29(1) and 30(1) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. A little reflection will at once show that this is not a satisfactory test. Where is the line to be drawn and which is the unit which will have to be taken ? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards ? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality. Thus Anglo-Indians or Christians or Muslims may congregate in one particular suburb of a town or one particular ward of a municipality and they may be in a majority there. According to the argument of learned counsel for the State of Kerala the Anglo-Indians or Christians or Muslims of that locality, taken as a unit, will not be a "minority" within the meaning of the Articles under consideration and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo-Indian or Christian community happen to reside in another suburb of the same town or another ward of the same municipality and their number be less than that of the members of other communities residing there, then those members of the Anglo-Indian or Christian community will be a minority within the meaning of Arts. 29 and 30 and will be entitled to establish and maintain educational institutions of their choice in that locality. Likewise the Tamilians residing in Karolbagh, if they happen to be larger in number than the members of other communities residing in Karolbagh, will not be entitled to establish and maintain a Tamilian school in Karolbagh, whereas the Tamilians residing in, say, Daryaganj where they may be less numerous than the members of other communities residing in Daryaganj will be a minority or section within the meaning of Arts. 29 and 30. Again Bihari labourers residing in the industrial areas in or near Calcutta where they may be the majority in that locality will not be entitled to have the minority rights and those Biharis will have no

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NC: 2024:KHC:29383 AND 1 OTHER educational institution of their choice imparting education in Hindi, although they are numerically a minority if we take the entire city of Calcutta or the State of West Bengal as a unit. Likewise Bengalis residing in a particular ward in a town in Bihar where they may form the majority will not be entitled to conserve their language, script or culture by imparting education in Bengali. These are, no doubt, extreme illustrations, but they serve to bring out the fallacy inherent in the argument on this part of the case advanced by learned counsel for the State of Kerala. Reference has been made to Art. 350A in support of the argument that a local authority may be taken as a unit. The illustration given above will apply to that case also. Further such a construction will necessitate the addition of the words "within their jurisdiction" after the words "minority groups". The last sentence of that Article also appears to run counter to such argument. We need not, however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to

the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo- Indians will certainly be minorities in the State of Kerala. It is admitted that out of the total population of 1,42,00,000 in Kerala there are only 34,00,000 Christians and 25,00,000 Muslims. The Anglo-Indians in the State of Travancore-Cochin before the re- organisation of the States numbered only 11,990 according to the 1951 Census. We may also emphasise that question 2 itself proceeds on the footing that there are minorities in Kerala who are entitled to the rights conferred by Art. 30(1) and, strictly speaking, for answering question 2 we need not enquire as to

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NC: 2024:KHC:29383 AND 1 OTHER what a minority community means or how it is to be ascertained.

41. But then, it was argued that the policy behind Art. 30(1) was to enable minorities to establish and maintain their own institutions, and that that policy would be defeated if the State is not laid under an obligation to accord recognition to them. Let us assume that the question of policy can be gone into, apart from the language of the enactment. But what is the policy behind Art. 30(1) ? As I conceive it, it is that it should not be in the power of the majority in a State to destroy or to impair the rights of the minorities, religious or linguistic. That is a policy which permeates all modern Constitutions, and its purpose is to encourage individuals to preserve and develop their own distinct culture. It is well- known that during the Middle Ages the accepted notion was that Sovereigns were entitled to impose their own religion on their subjects, and those who did not conform to it could be dealt with as traitors. It was this notion that was responsible during the 16th and 17th Centuries for numerous wars between nations and for civil wars in the Continent of Europe, and it was only latterly that it came to be recognised that freedom of religion is not incompatible with good citizenship and loyalty to the State, and that all progressive societies must respect the religious beliefs of their minorities. It is this concept that is embodied in Arts. 25, 26, 29 and 30. Article 25 guarantees to persons the right to freely profess, practice and propagate religion. Article 26 recognises the right of religious denominations to establish and maintain religious and charitable institutions. Article 29(1) protects the rights of sections of citizens to have their own distinct language, script or culture. Article 30(1) belongs to the same category as Arts. 25, 26 and 29, and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. In other words, the minorities should have the right to live, and

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NC: 2024:KHC:29383 AND 1 OTHER should be allowed by the State to live, their own cultural life as regards religion or language. That is the true scope of the right conferred under Art. 30(1), and the obligation of the State in relation thereto is purely negative. It cannot prohibit the establishment of such institutions, and it should not interfere with the administration of such institutions by the

minorities. That right is not, as I have already pointed out, infringed by Clause (20). The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Art. 30(1). The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the State various obligations in relation to the minorities apart from what is involved in Art. 30(1). Thus, Art. 30(2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up :

- (1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities, religious or linguistic.
- (2) The State is under a negative obligation as regards those institutions, not to prohibit their

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NC: 2024:KHC:29383 AND 1 OTHER establishment or to interfere with their administration.

Clause (20) of the Bill violates neither of these two obligations. On the other hand, it is the contention of the minorities that must, if accepted, result in discrimination by the State. While recognised institutions of the majority communities will be subject to clause (20), similar institutions of minority communities falling within Art. 30(1) will not be subject to it. The former cannot collect fees, while the latter can. This surely is discrimination. It may be stated that learned counsel for the minorities, when pressed with the question that on their contention Art. 45 must become a dead letter, answered that the situation could be met by the State paying compensation to the minority institutions to make up for the loss of fees. That serves clearly to reveal that what the minorities fight for is what has not been granted to them under Art. 30(2) of the Constitution, viz., aid to them on the ground of religion or language. In my opinion, there is no justification for putting on Art. 30(1) a construction which would put the minorities in a more favoured position than the majority communities.

9.39. By relying on the above she submits that any action of the State cannot negate the customary law/practice of a citizen and in this case, the customs and traditions practised by the Kodava people.

9.40. She relies upon the decision of the Apex Court in Sardar Syedna Taher Saifuddin Saheb

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NC: 2024:KHC:29383 AND 1 OTHER vs. State of Bombay⁷, more particularly para 59 and 62 and submits Article 25 of the Constitution gives every person a right to achieve his purpose, practice and propagate religion, as such the Kodava race is also required to freely practice the civil and religious usages even if such practice is contrary to the law. Paras 59 & 62 are reproduced hereunder for easy reference:

59. It is admitted, however, in the present case that the Dai as the head of the denomination has vested in him the power, subject to the procedural requirements indicated in the judgment of the Privy Council, to excommunicate such of the members of the community as do not adhere to the basic essentials of the faith and in particular those who repudiate him as the head of the denomination and as a medium through which the community derives spiritual satisfaction or efficiency immediately from the God-head. It might be that if the enactment had confined itself to dealing with excommunication as a punishment for secular offences merely and not as an instrument for the self preservation of a religious denomination the position would have been different and in such an event the question as to whether Articles 25 and 26 would be sufficient to render such legislation unconstitutional might require serious consideration. That is not the position here. The Act is not confined in its AIR 1962 SC 853

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NC: 2024:KHC:29383 AND 1 OTHER operation to the eventualities just now mentioned but even excommunication with a view to the preservation of the identity of the community and to prevent what might be a schism in the denomination is also brought within the mischief of the enactment. It is not possible, in the definition of excommunication which the Act carries, to read down the Act so as to confine excommunication as a punishment of offences which are unrelated to the practice of the religion which do not touch and concern the very existence of the faith of the denomination as such. Such an exclusion cannot be achieved except by rewriting the section.

62. Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his administration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Article 25(1) and rendering the protection illusory.

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NC: 2024:KHC:29383 AND 1 OTHER 9.41. She refers to the decision in DAV College Jalandhar vs. State of Punjab⁸, more particularly para 9, 10 and 18 which are reproduced hereunder for easy reference:

9. Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities have to be determined in relation to the population of the State. On this aspect Das, C.J., in Kerala Education Bill case speaking for the majority thought that there was a fallacy in the suggestion that a minority or section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically, minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject-matter of Item 11 of the State list, subject only to the provisions of Entries 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and AIR 1971 SC 1737 : 1971 INSC 142

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NC: 2024:KHC:29383 AND 1 OTHER consequently the minority must be determined by reference to the entire population of that State.

10. It is undisputed, and it was also conceded by the State of Punjab, that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was however contested. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that that language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1).

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha -- in Hindi language and Devnagri character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi or Sanskrit. The belief is that the name of the script

Devnagri is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

9.42. She refers to the decision in Virendra Nath Gupta and others vs Delhi Administration

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NC: 2024:KHC:29383 AND 1 OTHER and others⁹, more particularly para 7, which is reproduced hereunder for easy reference:

7. The third submission made on behalf of the appellants is that the additional essential qualification regarding knowledge of Malayalam was prescribed in contravention of the Rules and this was done with a view to oust the appellants who were the senior teachers fully equipped with other essential qualifications for appointment to the post of Vice-Principal. While considering this question we cannot overlook the fact that the institution is a linguistic minority institution, its object is to promote the study of Malayalam and to promote and preserve Malayalee dance, culture and art. Article 29 of the Constitution of India guarantees right of linguistic minorities having a distinct language, script and culture of their own and, it also protects their right to conserve the same. Article 30 of the Constitution guarantees the right of minorities whether based on religion or language to establish and administer educational institutions of their choice. A linguistic minority has not only the right to establish and administer educational institution of its choice, but in addition to that it has further constitutional right to conserve its language, script and culture. In exercising this right a linguistic minority may take steps for the purpose of promoting its language, script or culture and in that process it may prescribe additional qualification for teachers employed in its institution. The rights conferred on linguistic minority under Articles 29 and 30 cannot be taken away by any law made by the legislature or by rule made by executive authorities. However, the management of a minority institution has no right to maladminister the institution, and it is permissible to the State to prescribe syllabus, curriculum of study and to regulate the appointment and terms and conditions of teachers 1990 SCC (L&S)

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NC: 2024:KHC:29383 AND 1 OTHER with a view to maintain a minimum standard of efficiency in the educational institutions. This is the consistent view of this Court, as held in a number of decisions where the scope and extent of minority's right to manage its institutions were considered. See In re the Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] ; Ahmedabad St. Xavers College Society v. State of Gujarat [(1974) 1 SCC 717 : (1975) 1 SCR 173] ; Lilly Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134 : (1979) 1 SCR 820] ; Frank Anthony Public School Employees' Association v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35] ; Y. Theclamma v.

Union of India [(1987) 2 SCC 516] ; All Bihar Christian Schools Association v. State of Bihar [(1988) 1 SCC 206] . Though minority's right under Articles 29 and 30 is subject to the regulatory power of the State, but regulatory power cannot be exercised to impair the minority's right to conserve its language, script or culture while administering the educational institutions. An institution set up by the religious or linguistic minority is free to manage its affairs without any interference by the State but it must maintain educational standards so that the students coming out of that institution do not suffer in their career. But if the recognised minority institution is recipient of government aid, it is subject to the regulatory provisions made by the State. But these regulatory provisions cannot destroy the basic right of minority institutions as embodied under Articles 29 and 30.

9.43. She refers to the decision in Jagdev Singh Sidhanti v. Pratap Singh Daulta¹⁰ , more particularly para 26 thereof, which is reproduced hereunder for easy reference:

AIR 1965 SC 183 : 1964 INSC 33

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NC: 2024:KHC:29383 AND 1 OTHER

26. It is in the light of these principles, the correctness of the findings of the High Court that Sidhanti was guilty of the corrupt practice of appealing for votes on the ground of his language and of asking the voters to refrain from voting for Daulta on the ground of the language of Daulta may be examined. The petition filed by Daulta on this part of the case was vague. In para 11 of his petition it was averred that Sidhanti and his agents made a systematic appeal to the audience to vote for Sidhanti and refrain from voting for Daulta "on the ground of religion and language", and in para -12 it was averred that in the public meetings held to further the prospects of Sidhanti in the election, Sidhanti and his agents had made systematic appeals to the electorate to vote for him and refrain from voting for Daulta "on the ground of his religion and language". A bare perusal of the particulars of the corrupt practice so set out in paras 11 and 12 are to be found in Schedules. 'C' and 'D' clearly shows that it was the case of Daulta that Sidhanti had said that if the electorate wanted to protect their language they should vote for the Haryana Lok Samiti candidate.

Similar exhortations are said to have been made by the other speakers at the various meetings. It is stated in Schedule 'D' that resolutions were passed at the meetings urging upon the Government to "abolish Punjabi from Haryana", that many speakers said that the Haryana Lok Samiti will fight for Hindi for Haryana and that they were opposed to the teaching of Punjabi in Haryana. These exhortations to the electorate to induce the Government to change their language policy or that a political party will agitate for the protection of the language spoken by the residents of the Haryana area do not fall within the corrupt practices of appealing for votes on the ground of language of the candidate or to refrain from voting on the ground of language of the contesting candidate.

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NC: 2024:KHC:29383 AND 1 OTHER 9.44. By relying on the above Judgments, she submits that the fundamental duties not only apply to the citizens but also to the State inasmuch as in terms of Article 51-A(f), there is a duty cast on the state to preserve the rich heritage of composite culture. The State by way of impugned amendment has done away with the culture of Kodavas thereby violating Article 51-A(f), which is reproduced hereunder for easy reference:

51-A. Fundamental duties -

(f): to value and preserve the rich heritage of our composite culture;

9.45. She submits that the claim of the State that Jamma Bane lands are government lands are completely false inasmuch as the Bane lands of Coorg were never the properties of the British government nor of the Rajas. The Banes continued to be under private ownership of the

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NC: 2024:KHC:29383 AND 1 OTHER joint family, the British, never being the owner, had not handed over the bane land to the Indian government after the independence. The government lands under the CLRR were called paisari land. Jamma Bane land having a distinct name, not being a paisari land, is not a government land. Under Article 294(b) there is an obligation on the State to preserve the customs and traditions of the Kodavas which is reproduced hereunder for easy reference:

294(b): all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, 9.46. By referring to Section 6 of the Karnataka General Clauses Act, 1899, she submits that repeal of any enactment will not affect any rights, privileges or obligations acquired, accrued or incurred under any enactment so

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NC: 2024:KHC:29383 AND 1 OTHER repealed. Thus, she submits that the repeal of CLRR will not take away the rights invested with the Kodavas. Section 6 of the Karnataka General Clauses Act, 1899 is reproduced hereunder for easy reference:

6. Effect of repeal.- Where this Act or 1 [any Mysore Act or Karnataka Act]1 made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not,-

(a) revive anything not in force or existing at the time at which the repel takes effect;
or

- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactments so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such, right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

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NC: 2024:KHC:29383 AND 1 OTHER 9.47. She submits that customary law continues to be administered even after the Constitution came into being. In this regard, she refers to a decision in S.N. Rama Shetty & others vs. Kongera T. Appanna¹¹, pages 222 and 223, which are reproduced hereunder for easy reference "Whatever might be the quantity of timber and fire-wood cut by the defendant, it is urged that it was the property of Government and not that of the plaintiff and that therefore the defendant is not liable for damages to the plaintiff. This argument is founded on the character of the holding of what is known as 'bane' land in Coorg. In Appendix 3 'Definitions' given in the Coorg Revenue Manual, 'bane' is described as 'forest land granted for the service of the holding of wet land to which it is allotted, to be, held free of revenue by the cultivator for grazing, and to supply leaf manure, firewood and timber required for the agricultural and domestic purposes of the cultivator, so long as he continues in possession of the wet land.' Such bane may be attached to wet land held under jama tenure, umbli tenure or sagu tenure. The lands held in jama or umbli tenure are not fully assessed and are not alienable while land held under sagu tenure is alienable. Since the bane is granted only for the purpose of making limited use of the forest produce and the holder has no right to cut and remove the timber out of 1959 Mys.LJ 218

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NC: 2024:KHC:29383 AND 1 OTHER the bane land or for purposes other than for the service of the main holding, it is urged that the timber is the property of Government. The Coorg Land and Revenue Regulation 1899 does not define any of the tenures mentioned above and the definition referred to above is not, strictly speaking, a statutory definition. There is nothing in the above Regulation to alter or affect the character of any of the above tenures. We have therefore to see what the character of a bane tenure is as understood by customary law and practice. In Baden-Powell's book on Land Systems in British India, it is stated as follows:-

"The bane.....is destined to supply the warg-holder with grazing, timber, firewood, and herbage which he burns on the rice-fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural and domestic wants of the holder; and if timber, etc., is sold, the tenure is infringed, and Government has a right to demand seignorage on the wood..... In the jamma tenure, as the bane is included in the sanad, it is virtually a part of the property. In the sagu tenure, there is no sanad but the attached area of bane must be held and used subject to the same conditions. Under these circumstances, the bane cannot be regarded as actually the property of the tenure holder, nor, on the other hand, as land at the disposal of Government. It is which is held as an appendage to a warg or estate, or to a sagu holding, in a sort of trust, or on condition for a certain use".

In the Note by Sir J. B. Lyall on Tenures in Coorg, printed as Appendix IV in the Coorg Revenue Manual, there is nothing to indicate any difference from what is stated above in regard to the character of a bane holding. It would therefore

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NC: 2024:KHC:29383 AND 1 OTHER appear that bane land held in association with privileged, warg holding like jamma and umbli land is in the possession and dominion of the holders and that though they have no right to cut the timber and dispose it of for purposes other than for the service of the main holding they can do so subject to payment of seignorage and that there is no absolute prohibition to their cutting the timber. In fact, the rules framed in regard to this matter both under the Coorg Land and Revenue Regulation and the Forest Regulation provide for the cutting of the timber by the holder on payment of seignorage for the 'redemption' of the timber and they do not contemplate Government permitting any one other than the holder to cut or remove timber. The seignorage itself represents not the full value of the timber, but a part of the value fixed from time to time presumably with reference to the prevailing rates at the time of the promulgation of the rules. It is also significant to note that in the rules promulgated in 1953, provision is made for extraction and disposal of timber through Government agency and that the holder is entitled to 50 per cent of the net proceeds. The nature of the tenure and the above rules appear to indicate that the holder has at least dominion over the timber and whatever his accountability to Government may be, any third party who interferes with the bane land is accountable to the holder. Therefore, the defendant's contention on this matter has no force.

As regards the rates, the learned Judge has adopted the rates given in the plaint since the rates fetched at the sales held by the Forest Department at Hunsur on 18-2-48 were higher than the rates mentioned in the plaint. The defendant has examined some witnesses to speak to the rates but their evidence is of little value. D. W. 2 Basaviah says that one Baliah has filed a suit against him claiming Rs. 2-4-0 per cubic foot of honne timber. He says nandi was sold at Re. 1 and

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NC: 2024:KHC:29383 AND 1 OTHER rose-wood at Rs. 2-4-0 per cubic foot. He has not maintained any accounts. D. W. 3 Anniah who is in the timber trade speaks about timber sales, a statement of which is contained in a letter dated 23-6-49 (Ex. B-7) addressed to him by the proprietors of Gowri Shankar Mills, Hassan, to whom he says he had supplied timber. Neither his account books nor his customers' account books are produced. The rates in the letter can hardly be taken into consideration as evidence. D.W. 4 Subbaraya Setty speaks to the rates as mentioned in Ex. B-4 which purports to be a statement of account sent by him to the defendant. It is dated 25-1-49. It no doubt mentions the rates at which different varieties of timber were sold. But this witness has not produced his accounts and the rates mentioned in the statement of account contained in the letter can hardly be regarded as evidence. He has also produced Ex. B-8, a communication dated 28-2-48 from the Chief Forest Officer, Coorg. Amongst the varieties of timber mentioned in it, the only relevant variety for which the rate is given is Biti and the rate is Rs. 2-3-0. But the dimensions of the logs are not given. Apart from the evidentiary value to be attached to a communication like this, it is difficult to take the rate into consideration in the absence of details regarding the dimensions of the logs, for the rate would depend on them also. Thus we are left with the rates fetched in the Forest Departmental sale. There is no reason to dispute their correctness or authenticity". 9.48. She relies on a decision in C.A. Nanjappa vs. C.M. Thimmaya¹², more particularly pages 1963 Mys.LJ 486

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NC: 2024:KHC:29383 AND 1 OTHER 487-489 which are reproduced hereunder for easy reference:

"The short point for consideration in this appeal is whether the finding of the learned District Judge that the suit filed by the appellants in a Civil Court is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation, is correct. It is idle for the appellants to contend that the suit is one for readjustment or reallocation of the maintenance provision among the members of the Coorg family and not for a partition of the properties. The parties are Coorgis. They are governed by Mithakshara School of Hindu Law as modified by the Coorg Customary Law. The suit as brought now is clearly one for partition of the suit schedule properties which are admittedly joint family properties. It is not maintainable by virtue of S. 145 of the Coorg Land and Revenue Regulation. The contention of the appellants that the suit as brought by them is not a suit for partition as contended by the respondents but is only a suit for readjustment of the maintenance division effected on 10-10-1923 is an after-thought. We are unable to accept the contention of the learned Counsel for the appellants that once the trial Court allowed the amendment prayed for by the appellants and permitted them to delete the word 'Partition' in paragraph (7) of the plaint and to add the fresh allegations to the effect that the suit is only for increased maintenance, the suit cannot be considered to be one for fresh partition. There is no substance in the said contention. The allegations made by the appellants in the plaint make it abundantly clear that the suit is one for readjustment or reallocation of the properties allotted to the two branches under the deed dated 10-10-1923. Even on the basis that the suit is one for readjustment of the properties the suit is not maintainable. S. 145 of the Coorg Land and Revenue Regulation unmistakably ousts

the jurisdiction of the Civil Courts to entertain such suits. In para 160 of his book "A Manual of Coorg Civil Law" Major General Rob. Cole, Superintendent of Coorg dealing with the question whether a partition of the joint family proper-ties amongst the members of the Coorg family could be effected has stated:

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NC: 2024:KHC:29383 AND 1 OTHER "Partition not allowed-It was not customary among Coorgs to acquire or hold land, houses, &c., separately. Since about 1805 however some families quarrelled and appealed to the former Rajas, who directed that they should in accordance with the Hindu Law be allowed to divide. Subsequent to our assumption of the Government of the country several other families have similarly applied to the Courts and obtained decrees for partition; whilst others have divided off amicably amongst themselves. In 1858 the Thakkas and headmen of the Coorgs represented the loss and ruin occasioned to their ancient houses by this innovation and system of partition; and the Judicial Commissioner in additional Spl. A. S. No. 117 of 1958-59 passed a decree declaring that division was contrary to the ancient custom of Coorg and ever since division has been strictly inter directed."

The learned Counsel for the appellants is not able to point out to us any decision of any Court which has taken a contrary view. S. 145 of the Coorg Land and Revenue Regulation prohibits division of the joint family properties amongst the members of the Coorg family whether it be a partition or other allotment amongst the members of the family. According to the section a suit for allotment of the joint family properties even for purposes of maintenance is excluded from the jurisdiction of a Civil Court. S. 145 of the Coorg Land and Revenue Regulation in so far as it relates for our purpose reads thus:

"145. Bar of suits in certain matters-Except as otherwise pro- vided by this Regulation no suit shall be brought in any Civil Court, in respect of any of the following matters, namely.....

(xv) any claim for the partition of an estate or holding or any question as to the allotment of land when such estate holding or land is one of which the land-

revenue has been wholly or partly assigned or released or which is held as joint family property by persons of the Coorg race or any claim for the distribution of land revenue on partition or any other question connected therewith not being a question as to the partibility of, or the title to, the property of which partition is sought;....."

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NC: 2024:KHC:29383 AND 1 OTHER The above provision is quite clear. It is idle for the appellants to contend that in spite of such a clear provision the jurisdiction of a Civil Court to deal with the allotment of the joint family properties of a Coorg family is within the jurisdiction of a Civil Court.

The learned District Judge, is, therefore, justified in holding that the suit filed by the appellants was not maintainable and dismissing the same."

9.49. Relying on the above judgements she submits that the lands granted by the King under the Jamma Tenure system became the property of the house/family and not of the individual, and any grant made by the King is to be enjoyed by all members of the family. It is the family name that is entered in the SYST records as an abstract owner. In the said records the name of Patedara of the family who is managing the affairs of the family is entered into. The names of all other family members, i.e. maintenance division members, are entered in the 6th column of the Jamma Bandi. Upon computerization, the family name is shown at the head of the list in the 9th column, followed by the name of

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NC: 2024:KHC:29383 AND 1 OTHER Patedara and thereafter, maintenance division holders, and now, after the impugned amendment, a partition deed with a revenue sketch is insisted for entry of the name of any maintenance division holder.

9.50. A Sannad was granted for every holding which would also include a Jamma Bane which was held at half the ordinary assessment by the eldest member of the family.

9.51. By referring to G. Richter's Gazetteer of Coorg, page 252, she submits that since Coorg had no standing army, the Kodavas who rendered military service were not paid any salary whilst on active duty, instead Kodavas were allowed to make use of Jamma Bane land at half assessment. The said extract is hereunder reproduced for easy reference:

"As the Coorg force was not a standing army, it received no pay. Whilst on active duty as

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NC: 2024:KHC:29383 AND 1 OTHER guards or during warfare, the soldiers were maintained at the public expense, and being remarkable for their predatory habits, they largely shared with the Rájahs in the spoil. Without discipline and organization, the Coorgs displayed their strength chiefly behind their stockades and Cadangas. In the open field they rarely faced the attacks of regular troops."

9.52. She submits that the issue in question in Cheekkere's case was as regards the entitlement of the government to the mines and minerals in the subsoil of Bane land. There is no distinction made between the Jamma Bane land or other Bane lands. However, this court singled out Jamma Bane land and held Jamma Bane land to be government land, which is not correct. As aforesaid, she submits that Jamma Bane land was never government land. She further submits that Cheekkere Poovaiah's decision (*supra*) would not apply to the present case since that was one relating to the sub-soil rights, more particularly relating to

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NC: 2024:KHC:29383 AND 1 OTHER minerals in the sub-soil, which vests with the government. If there are no minerals in the land and the land is used for agricultural activities and or customary religious practices of Kodavas, the State cannot have any right on such a land. Thus, even if the decision in Cheekere Poovaiah's case is accepted to be correct, she submits that the decision would only apply in regard to mineral rights in the sub-soil and not as regards rights of ownership by the entire family in Jamma Bane land. 9.53. She refers to the decision in the case of Threesiamma Jacob & others -v- Geologist Department of Mining & Geology & others¹³, more particularly paras 51, 54, 55 and 57 thereof which are reproduced hereunder for easy reference:

2013(7) SCR 863 : 2013 INSC 447

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NC: 2024:KHC:29383 AND 1 OTHER

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium).

Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals - the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as

Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively²⁶ providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines

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NC: 2024:KHC:29383 AND 1 OTHER stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5²⁷ for prohibition or regulation of mining activity in such mineral. Under Section 10²⁸ of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.

9.54. She submits that even after the KLR Act and Rules substituted the CLRR, the rights created under CLRR could not be taken away. Section 202 of the Repeal and Savings clauses of KLR saves all rights, privileges, obligations and liability accrued or incurred, this aspect has not

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NC: 2024:KHC:29383 AND 1 OTHER been considered in Cheekere Poovaiah's case, and there is a mistake committed by treating unalienated Jamma Bane land as government lands or government grants which is not. She submits that Cheekere Poovaiah's case is per incuriam passed in ignorancia and subsilentio arrived at a conclusion. 9.55. On the basis of the above, she submits that the above writ petitions are required to be allowed and the reliefs sought for granted.

10. Sri. Vikram Huilgol, learned Additional Advocate General submits that, 10.1. By referring to the statement of objections, and the Amended Act, he submits that the amendment was enacted with a view to confer certain rights including the assessment of Bane lands in the Coorg district.

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NC: 2024:KHC:29383 AND 1 OTHER 10.2. His submission is that by way of the amendment, certain rights have been conferred on the Kodavas, the amendment is a beneficial legislation which seeks to confer proprietary rights on landholders of Bane land in Kodagu/Coorg. By way of amendment, the persons in possession of Bane land will be registered as 'Occupants' entitling them to full ownership of the said land, bringing about uniformity in the State's land revenue system. 10.3. The State, being of the opinion that the Kodavas were deprived of their full ownership of Jamma Bane land, has sought to confer such full ownership, there are no rights which are being taken away by the State in respect of the said lands and on this basis he submits that no Kodava can be aggrieved by the rights which have been conferred under the Amended Act, and it is for this reason that in the last decade

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NC: 2024:KHC:29383 AND 1 OTHER or so only a few persons like the Petitioners have challenged the amendment, in terms of Sub-section (20) of Section 2 of the KLR Act 10.4. Jamma tenure is originally granted towards military service or semi-military service; under the said tenure, the land was held on payment of half assessment and as a consideration for which military service was required to be rendered to the ruler as and when demanded. Such tenure was in respect of wetlands known as warg measuring 1.5 acres each in which rice was cultivated and the adjoining bane which was forest land considered necessary for grazing, leaf manure, firewood, and timber for agricultural purposes.

10.5. Bane land under the Jamma tenure was free from assessment for upto 10 acres known as 'Privileged Bane', while in respect of wet lands

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NC: 2024:KHC:29383 AND 1 OTHER adjoining the Bane, the tenure holder was to pay half of the assessment. It is in that background, due to there being no requirement to make payment of assessment, Jamma tenure was considered to be a privileged tenure.

10.6. His submission is that there was no restriction as such for alienation, many of the Kodava families had obtained decrees of partition from the then Raja and or the Courts, effected partition and thereafter proceeded to sell their individual extent of land.

10.7. By referring to the publication Religion and Society Among by the Coorg -South India by M.N. Srenivas 1952 edition, he submits that if all adult members of the lineage consented to alienation, the Patedara of the family was required to make an application

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NC: 2024:KHC:29383 AND 1 OTHER before the Revenue Authorities seeking permission to alienate the land, the seller had to pay 5% of the market value of the property as Nazarana to the State which subsequently was enhanced to 20%.

10.8. The land once transferred/alienated, the Jamma property was treated as sagu property and amenable for regular assessment. This practice having been followed, he once again reiterates that there was no prohibition for sale of Jamma Bane land. He also refers to Rules 164-167 of the CLRR and submits that the rules permitted to alienate Jamma Bane land. Rule 164 and 167 reads as under:

164. Jama, Umbli, Bhatamanya and Jaghir lands.- (1) The Assistant Commissioner may permit the alienation of jama, jama umbli, bhatamanya and jaghir lands [also sale, gift, mortgage or release of maintenance shares of such lands in a family patta other than bhatamanya lands in favour of the members of the same family] in the following circumstances, without reference to the Chief Commissioner.-

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NC: 2024:KHC:29383 AND 1 OTHER

(a) Subletting of wet land for not more than 15 years, with a proportionate part of the attached bane, if desired;

(b) Mortgage as security for loans advanced by Government under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, as amended by Coorg Act III of 1936;

(c) Mortgage as security for loans advanced by Co-operative Credit Societies for purposes for which loans might have been made under those Acts;

(d) Exchange for lands held on privileged tenure or on full assessment on condition that the transaction is to the mutual advantage of the party or parties concerned, the lands exchanged are approximately equal in value and the transfer is ratified by the performance of the ghatti ceremony. In such case, the tenure will change with the ownership;

(e) Hypothecation for not more than 15 years, of future crops. The mortgagee may be required to give security for the payment of revenue during the currency of the mortgage. (No permission is required for the hypothecation of standing crops);

(f) The permanent alienation of bhatamanya lands to a Brahmin;

(g) Sale, gift, mortgage or release of maintenance shares of jama, umbli or jaghir lands in a family patta in favour of the members of the same family, provided that all the adult male members in the family and where there are minors, the guardians, agree to the transaction. (2) If such land is leased without the permission of the Assistant Commissioner, he shall refer the case to the Chief Commissioner for orders. The Chief Commissioner may either..-

(a) Resume the land and, if he thinks fit, regrant it to the occupier on sagu tenure;

(b) Charge sagu rate for the term of the lease, in which case the privileged rate shall ordinarily be revived on termination of the lease; or

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NC: 2024:KHC:29383 AND 1 OTHER

(c) If the circumstances are unobjectionable, give sanction to the lease, the privileged rate being maintained. (3) If the Chief Commissioner resumes land and regrants it to the occupier under clause (2)(a) above, he may, before the regrant is made, recover land and timber-value under the ordinary provisions of the rules, or a proportion of such value as he thinks reasonable. (4) Lands held on waram tenure (i.e., sublet for short periods on terms of a division of crop between landholder and tenant) will not be deemed to be alienated within the meaning of Section 45 of the Coorg Land and Revenue Regulation.

167. [Privileged wet, bane or hithlu lands. (1) The alienator of privileged wet, ban thithlands shall at the Governments Nazarana, a sum equal to twenty per cent of the market value of the land alienated.] (2) Jaghir banes and hitlus may be cultivated free of assessment without limit, and without the permission of the Assistant Commissioner.

(3) On the hitlus of Yedavanad specified in the Raja's sist accounts, and not alienated by their original grantees or their representatives, cultivation of not more than 10 acres is allowed free of assessment: Provided that the land so cultivated shall be in a compact block. (4) In other respects the provisions of Rules 136 and 139 apply to privileged banes and hitlus. 10.9. His submission is that amendment was introduced taking into account the change in the societal conditions, including the factors such as breakdown of joint family system, mobility of the citizens, disbursal of members

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NC: 2024:KHC:29383 AND 1 OTHER from ancestral land, diverse economic pursuits of the members of the family, employment and or business interests outside the district of Coorg, etc. 10.10. By referring to the Cheekere Poovaiah's case, he submits that the Full Bench of this Court held that both holders of privileged and unprivileged Jamma Bane lands are not full owners but have limited rights, the land belonging to the government. Once Jamma Bane lands are alienated, the holders of such lands are entitled to all rights and are subject to liability of full ownership including full assessment of the land. He submits that the full Bench has recognized the alienation of Jamma Bane land as common place and as such, the consequences of alienation over rights and liabilities of Jamma Bane land have been categorically laid down in the said decision.

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NC: 2024:KHC:29383 AND 1 OTHER 10.11. On account of the Full Bench imposing certain restrictions on holders of Jamma Bane land, the State has now by amending Subsection (2o) of Section 2, done away with such restrictions, introduced a system of registering the holder of Jamma

Bane land as an occupant and thereby conferring full ownership on the said holder without alienation, thus by virtue of the amendment, all holders/occupants of alienated or unalienated as well as unprivileged bane lands including Jamma Bane land, are placed at par. On such registration as an occupant, even the government cannot claim any ownership in the said land and the said land would exclusively belong to the registered owner. He refers to the decision of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Rakesh Kohli¹⁴, more particularly para nos. (2012) 3 SCC 481

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NC: 2024:KHC:29383 AND 1 OTHER 15, 16, 17, 18, and 19 thereof which are reproduced hereunder for easy reference:

15. In our opinion, the High Court was clearly in error in declaring clause (d), Article 45 of Schedule I-A of the 1899 Act which was brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to approve the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonableness and irrationality.

The High Court failed to keep in mind the well- defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature.

16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. [(1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38) "43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and

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NC: 2024:KHC:29383 AND 1 OTHER two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of

the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

18. Then dealing with the decision of this Court in State of T.N. v. Ananthi Ammal [(1995) 1 SCC 519], a three-Judge Bench in McDowell and Co. [(1996) 3 SCC 709] observed in paras 43 and 44 of the Report as under: (McDowell and Co. case [(1996) 3 SCC 709], SCC p. 739) "43. ... Now, coming to the decision in Ananthi Ammal [(1995) 1 SCC 519], we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation

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NC: 2024:KHC:29383 AND 1 OTHER in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7) '7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.'

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

19. The High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such

enactment could not have been struck down on the ground that it was arbitrary or irrational.

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NC: 2024:KHC:29383 AND 1 OTHER 10.12. Relying on the above, he submits that a statute enacted by the Central Parliament or State legislature cannot be declared unconstitutional unless there is a flagrant violation of the provisions.

10.13. He relies on the decision of the Hon'ble Apex Court in Ashoka Kumar Thakur v. Union of India¹⁵, more particularly para 219, which is produced hereunder for easy reference:

219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground.

The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law. This Court in State of Rajasthan v. Union of India [(1977) 3 SCC 592] said : (SCC p. 660, para 149) (2008) 6 SCC 1 : 2008 INSC 473

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NC: 2024:KHC:29383 AND 1 OTHER "149. ... if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities." Therefore, the plea of the petitioner that the legislation itself was intended to please a section of the community as part of the vote catching mechanism is not a legally acceptable plea and it is only to be rejected.

10.14. By relying on the above, he submits that a law passed by the legislature can only be challenged on constitutionally recognized and available grounds. Customs, traditions, and unreasonableness are not grounds for such a challenge.

10.15. He refers to the decision of the Hon'ble Apex Court in Binoy Viswam v. Union of India¹⁶, more particularly para 83 thereof, which is reproduced hereunder for easy reference:

83. It is, thus, clear that in exercise of power of judicial review, the Indian courts are invested with powers to strike down primary legislation enacted by Parliament or the State Legislatures. However, while undertaking this exercise of judicial review, the same is to be done at three levels. In the first stage, the Court would examine as to whether (2017) 7 SCC 59 : 2017:INSC:478

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NC: 2024:KHC:29383 AND 1 OTHER impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions (substantive judicial review) or it falls foul of the federal distribution of powers (procedural judicial review). If it is not found to be so, no further exercise is needed as challenge would fail. On the other hand, if it is found that legislature lacks competence as the subject legislated was not within the powers assigned in the List in Schedule VII, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution. However, while undertaking substantive judicial review, if it is found that the impugned provision appears to be violative of fundamental rights or other constitutional rights, the Court reaches the second stage of review. At this second phase of enquiry, the Court is supposed to undertake the exercise as to whether the impugned provision can still be saved by reading it down so as to bring it in conformity with the constitutional provisions. If that is not achievable then the enquiry enters the third stage. If the offending portion of the statute is severable, it is severed and the Court strikes down the impugned provision declaring the same as unconstitutional.

10.16. By relying on Binoy Viswam's case he submits that judicial review would require the court to first examine whether the legislation is compatible with the fundamental rights as enshrined in the Constitution or falls foul thereof. If it is not found to be so, no further exercise is to be done. The only other aspect

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NC: 2024:KHC:29383 AND 1 OTHER that could be checked is whether the legislature lacks competence on the subject matter or not. 10.17. In the present case, there is no violation of any fundamental right, nor can it be said that the State legislature lacks competence. Therefore, the challenge made is not sustainable. 10.18. He relies upon the decision of the Hon'ble Apex Court in Jaya Thakur v. Union of India¹⁷, more particularly para 66 and 74, which is reproduced hereunder for easy reference:

66. For considering the issue with regard to validity of the amendments, it will be apposite to refer to some of the judgments of this Court delineating the scope of the judicial review in examining the legislative functions of the legislature.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental

rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative Act can be challenged on the ground of manifest arbitrariness. However, while 2023 INSC 606

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NC: 2024:KHC:29383 AND 1 OTHER doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

10.19. Insofar as customs and traditions are concerned, his submission is that the same cannot be a ground to challenge the statute duly enacted by a competent legislature. The legislature has the authority to modify or abolish customs by validly enacting laws. As an example, he submits that there are various customs which are not acceptable in society today, which have also been criminalized, like payment of dowry, child marriage, female infanticide, etc. He relies on the decision in N. Adithayan v. Travancore Devaswom Board¹⁸ reported in para 9 thereof which is reproduced hereunder for easy reference:

9. This Court, in Seshammal v. State of T.N. [(1972) 2 SCC 11 : (1972) 3 SCR 815] again reviewed the principles underlying the protection engrafted in Articles 25 and 26 in the context of a challenge made to 2002(8) SCC 106: 2002 INSC 425

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NC: 2024:KHC:29383 AND 1 OTHER abolition of hereditary right of Archaka, and reiterated the position as hereunder : (SCC p. 21, paras 13-14) "13. This Court in Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] has summarized the position in law as follows (pp. 531 and 532):

"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282 : 1954 SCR 1005] , Mahant Jagannath Ramanuj Das v. State of Orissa [AIR 1954 SC 400 : 1954 SCR 1046] , Venkataramana Devaru v. State of Mysore [AIR 1963 SC 1638 : (1964) 1 SCR 561] , Durgah Committee, Ajmer v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 383] and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion.

The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.'

14. Bearing these principles in mind, we have to approach the controversy in the present case." 10.20. By relying on the above, he submits that no matter how longstanding or deeply rooted a customary usage may be, the same cannot prevail against a legislative enactment. A custom cannot be held out as a source of law or

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NC: 2024:KHC:29383 AND 1 OTHER law itself, contrary to the applicable law. He refers to the decision in Animal Welfare Board of India v. Union of India¹⁹, more particularly para 32, which is reproduced hereunder for easy reference:

32. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court's jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long-lasting tradition goes against the law, the law courts obviously would have to enforce the law. The learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In public interest litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paras 53 and 73 in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547: (2014) 3 SCC (Cri) 136], there is judicial determination about the practice being offensive to the provisions of the Central statute. It would be trite to repeat that provisions of a statute cannot be overridden by a traditional or cultural event. Thus, we accept the argument of the Petitioners that at the relevant point of time when the decision in A. Nagaraja [Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136] was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.

(2023) SCC Online 661 : 2023 INSC 548

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NC: 2024:KHC:29383 AND 1 OTHER 10.21. Relying on the above, he once again submits that a legislation cannot be invalidated on the ground that it violates customs.

10.22. He relies on the decision of the Hon'ble Apex Court in Animal Welfare Board of India cases (supra), referring to the above he submits that a statute cannot be overwritten by a traditional or cultural event, even if the same is in conflict with the statute.

10.23. By referring to entry V of List 3 of Schedule-VII he submits that the Parliament as well as the State legislature is authorized to enact laws relating to marriage, acquisition, divorce, succession, joint family, partition, etc. which were earlier governed by customs or personal laws. Entry 5 of List

3 of Schedule-VII is reproduced hereunder for easy reference:

5. Marriage and divorce; infants and minors;

adoption; wills, intestacy and succession; joint

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NC: 2024:KHC:29383 AND 1 OTHER family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

10.24. Insofar as the amendment to Section 80 of the Act of 1964 is concerned, he submits that the requirement of making payment of half the assessment was on the ground that a Kodava could be called for rendering military services at any point of time. In the present circumstances, there is no such forced conscription of Kodavas, any services rendered to the military, be it any branch is voluntary for which necessary payments are made as per the prevalent salary structure.

10.25. The amendment made to Section 80 is in furtherance of the grant of full ownership by way of amending subsection (20) of Section 2; both of them are to be read together. Once full ownership is granted under Subsection (20) of

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NC: 2024:KHC:29383 AND 1 OTHER Section 2, full assessment has to be paid in terms of Section 80. In the event of full ownership not being sought for and the occupant continuing to be a tenure holder the restriction of tenure would continue to apply requiring half assessment to be paid. 10.26. Customs and usages as also traditions cannot be a ground for seeking exemption from payment of tax since levy of tax is a sovereign function of the State made in exercise of sovereign powers in furtherance of a validly enacted legislation. He refers to the decision in K.B. Tea Product Pvt. Ltd. and Another vs. Commercial Tax Officer, Siliguri and Others²⁰, more particularly paras 31 and 32 thereof which are reproduced hereunder for easy reference:

(2023) SCC Online 615 : 2023 INSC 530

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NC: 2024:KHC:29383 AND 1 OTHER

31. The main submission on behalf of the appellants is that as prior to 01.08.2001, the appellants were availing the benefit of sales tax exemption, the said right could not have been taken away by virtue of amendment to Section 2(17) of the Act, 1994 on the ground of legitimate expectation as well as by promissory estoppel. Thus, it is the case on behalf of the appellants that as on 01.08.2001, under the Act, 1994, when Section 2(17) of the Act, 1994 came to be amended, the appellants had a

"vested right" and therefore, the amendment to Section 2(17) of the Act, 1994 shall not affect such "vested right" of exemption from payment of sales tax, which the appellants were availing prior to 01.08.2001.

32. However, it is required to be noted that this is a case of claiming exemption from payment of sales tax. As per the settled position of law, nobody can claim the exemption as a matter of right. The exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the State. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the State Government and it falls within the policy decision and as per the settled position of law, unless withdrawal is found to be so arbitrary, the Court would be reluctant to interfere with such a policy decision.

10.27. Relying on the above he submits that the court has held that there can be no exemption claimed for tax.

10.28. He submits that the Jamma tenure system is a land tenure system and is not strictly a custom, usage, or tradition and therefore, would not

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NC: 2024:KHC:29383 AND 1 OTHER come within the purview of Article 29 of the constitution. The Jamma land tenure system not being in tune with the social context of today, the State has carried out the necessary amendments to include, by conferring absolute rights and powers to the land holder. No ground under Article 29 has been made out in regard to the challenge in the present case.

10.29. He refers to the decision in Mohd. Hanif Quareshi vs. State of Bihar²¹, more particularly paras 12, 13 and 15 thereof which are reproduced hereunder for easy reference:

12. Before we actually take up and deal with the alleged infraction of the petitioners' fundamental rights, it is necessary to dispose of a preliminary question raised by Pandit Thakurdas Bhargava. It will be recalled that the impugned Acts were made by the States in discharge of the obligations laid on them by Article 48 to endeavour to organise agriculture and animal husbandry and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of certain specified animals. These directive principles, it is true, are not enforceable by any court of law but nevertheless they are fundamental in the AIR 1958 SC 731

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NC: 2024:KHC:29383 AND 1 OTHER governance of the country and it is the duty of the State to give effect to them. These laws having thus been made in discharge of that fundamental obligation imposed on the State, the fundamental rights conferred on the citizens and others by chapter III of the Constitution must be regarded as subordinate to these laws. The directive principles, says learned counsel, are equally, if not more, fundamental and must prevail. We are unable to accept this argument as sound. Article 13(2) expressly says that the State shall not make any law which

takes away or abridges the rights conferred by Chapter III of our Constitution which enshrines the fundamental rights. The directive principles cannot over-ride this categorical restriction imposed; on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of chapter III will be "a mere rope of sand". As this Court has said in the State of Madras v. Smt Champakam Dorairajan [1951 SCC 351 : 1951] SCR 525, 531], "The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights".

13. Coming now to the arguments as to the violation of the petitioners' fundamental rights, it will be convenient to take up first the complaint founded on Article 25(1). That article runs as follows:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

After referring to the provisions of clause (2) which lays down certain exceptions which are not material for our present purpose this Court has, in

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NC: 2024:KHC:29383 AND 1 OTHER Ratilal Panachand Gandhi v. The State of Bombay [(1954) SCR 1055, 1062-1063] explained the meaning and scope of this article thus:

"Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people."

What then, we inquire, are the materials placed before us to substantiate the claim that the sacrifice of a cow is enjoined or sanctioned by Islam? The materials before us are extremely meagre and it is surprising that on a matter of this description the allegations in the petition should be so vague. In the Bihar Petition No. 58 of 1956 are set out the following bald allegations:

"That the petitioners further respectfully submit that the said impugned section also violates the fundamental rights of the petitioners guaranteed under Article 25 of the Constitution in-as-much as on the occasion of their Bakr Id Day, it is the religious

practice of the petitioners' community to sacrifice a cow on the said occasion. The poor members of the community usually sacrifice one cow for every 7 members whereas it would require one sheep or one goat for each member which would entail considerably more expense. As a result of the total ban imposed by the impugned section the petitioners would not even be allowed to make the said sacrifice which is a practice and custom in their religion, enjoined upon them by

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NC: 2024:KHC:29383 AND 1 OTHER the Holy Quran, and practised by all Muslims from time immemorial and recognised as such in India."

The allegations in the other petitions are similar. These are met by an equally bald denial in paragraph 21 of the affidavit in opposition. No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah CVIII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those verses or throwing any light on this problem. We, however, find it laid down in Hamilton's translation of Hedaya Book XLIII at p. 592 that it is the duty of every free Mussulman, arrived at the age of maturity, to offer a sacrifice on the Yd Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. The very fact of an option seems to run counter to the notion of an obligatory duty. It is, however, pointed out that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats. So there may be an economic compulsion although there is no religious compulsion. It is also pointed out that from time immemorial the Indian Mussalmans have been sacrificing cows and this practice, if not enjoined, is certainly sanctioned by their religion and it amounts to their practice of religion protected by Article 25. While the petitioners claim that the sacrifice of a cow is essential, the State denies the obligatory nature of the religious practice. The fact, emphasised by the respondents, cannot be disputed, namely, that

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NC: 2024:KHC:29383 AND 1 OTHER many Mussalmans do not sacrifice a cow on the Bakr Id Day. It is part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example. Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders. Three of the members of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows. We have, however, no material on

the record before us which will enable us to say, in the face of the foregoing facts, that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea. In the premises, it is not possible for us to uphold this claim of the petitioners.

15. The meaning, scope and effect of Article 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjitlal Chowdhury v. The Union of India [(1950) 1 SCR 869] and ending with the recent case of Ramakrishna Dalmia v. Union of India [CAs Nos. 455-457 and 657-658 of 1957, decided on March 28, 1958] . It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is

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NC: 2024:KHC:29383 AND 1 OTHER that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. We, therefore, proceed to examine the impugned Acts in the light of the principles thus enunciated by this Court. 10.30. By referring to the above, he submits that there is a presumption that any statute or enactment is constitutionally valid, and it would therefore be for the person who challenges the validity of legislation to establish that the same is violative of constitutional principles.

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NC: 2024:KHC:29383 AND 1 OTHER 10.31. He also refers to the decision in Noel Harper vs. Union of India²², more particularly para no. 141 which is reproduced hereunder for easy reference:

141. It was vehemently urged that there is lack of infrastructure at the designated bank and that the bank branch is manned only by 40 odd personnel.

To buttress this plea, reference is made to the observation made by Reserve Bank of India--that voluminous data on foreign remittances will put an extra financial burden on the Bank and increase its costs including divert focus on monitoring of suspicious transactions. This argument does not commend to us at all. In digital banking operations, it is not the head count dispensing physical services that would matter, but the effectiveness of the software is important. We are also not impressed by the plea that for organisations located in remote parts of the country, there would be impediments and for that reason, Section 7 violates test of fairness and reasonableness. In any case, Respondent 3 (SBI) has on affidavit explained as to the extent of measures taken for ensuring efficient servicing of FCRA accounts of all the registered associations/account-holders. Respondent 3 has also assured that if need arises, suitable corrective measures including to upgrade the facilities/services would be taken at its end. Suffice it to observe that the argument under consideration cannot be the basis to doubt the constitutional validity of the provisions in the form of Section 12(1-A) and Section 17(1), as amended vide the Amendment Act. Needless to underscore that Respondent 3 has stated on affidavit before this Court that FCRA accounts opened in its designated branch can be operated online on real- (2022) SCC Online 434

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NC: 2024:KHC:29383 AND 1 OTHER time basis without the need for physical presence of the account-holder or its officials. 10.32. By relying on the above, he submits that mere contention that the implementation of a statute would give rise to a difficulty would not be a valid ground to challenge the same. 10.33. He relies on the Affidavit of the Under Secretary to the Revenue Department, Government of Karnataka, which has been filed stating that in terms of Cheekere Poovaiah's case, the holders of unalienated Jamma Bane lands both privileged and unprivileged were not entitled to the following rights which a fully accessed alienated bane lands would be entitled to:

10.34. The right to use and occupy the land was conditional on the payment of the amount due on account of land revenue for the same;

i. Right to transfer of occupancy rights;

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NC: 2024:KHC:29383 AND 1 OTHER ii. Right to pass on occupancy rights to legal heirs.

10.35. The Under Secretary has categorically stated in the affidavit that by virtue of the impugned amendment the holders of privileged and unprivileged Jamma Bane lands are placed at par with the occupants of unalienated fully assessed lands, thereby being entitled to the aforesaid three rights and also entitled to claim all incidents of occupancy of the said lands. It is stated that a holder could apply to the Revenue Inspector and Tahsildar making an application on that behalf, the Tahsildar would forward a report to the Department of Survey to ascertain possession over the concerned property and verification of the family tree.

10.36. Sri. Vikram Huilgol, on instructions, submits that only a verification of the family tree and

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NC: 2024:KHC:29383 AND 1 OTHER possession is made and that there is no requirement for a partition deed to be executed and or that an 11E sketch be prepared as regards the area falling to the share of the applicant seeking registration of the partition deed. His submission is that if a family tree is provided along with the details of the occupants, possession entry would be made in column No.9 of the RTC. He categorically submits that there is no requirement of a partition deed to be executed nor is the State forcing any Kodava family to execute a partition deed for the purpose of registration of their name into the revenue records. His submission is placed on record.

10.37. Based on all the above, he submits that the above petitions are to be dismissed.

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NC: 2024:KHC:29383 AND 1 OTHER

11. Reply affidavit has been filed by the Petitioners reiterating some of the arguments which have been advanced and it is reiterated that the revenue Officers are seeking for partition deed and a 11-E sketch for making entries into revenue records.

12. Heard Smt. Sarojini Muthanna, learned counsel for the Petitioners and Sri. Vikram Huilgol, learned Additional Advocate General along with Smt. Saritha Kulkarni, learned HCGP for respondents. Perused papers.

13. The points that would arise for consideration are:

1. Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?
2. Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system?
3. Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of

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NC: 2024:KHC:29383 AND 1 OTHER any customary practice, usage or tradition of the Kodava race?

4. Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled?

5. Is the amendment made to Subsection (20) of Section 2 valid or not?
6. Is the amendment to Section 80 of the Karnataka Land Revenue Act valid or not?
7. What is the effect of the impugned amendment?
8. What Order?

14. I answer the above points as under

15. Answer to Point No.1: Whether an amendment to the Statute can be questioned on the basis of the amendment being violative of customs, usages and traditions?

15.1. The submission of Smt. Sarojini Muthanna, the learned counsel for the Petitioners is that the impugned amendments which have been

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NC: 2024:KHC:29383 AND 1 OTHER carried out are violative of the customs, usage, and traditions of the Kodava community/race. 15.2. The submission is that the concept of partition is not recognised amongst the persons belonging to the Kodava race, if partition is effected, then, the whole concept of a joint family of Kodavas or the Kodava joint family would be destroyed. The entire land and the properties of a Kodava family are vested in the entire family. There is no distribution of the properties amongst the family members. In view of the amendment, the revenue officers are requesting and/or demanding that a partition deed be provided for the purpose of entry of names of the members of the family as also a sketch showing the entitlement of a member of the family, thus, essentially, forcing a partition in a Kodava family by metes and bounds. The submission is that since this

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NC: 2024:KHC:29383 AND 1 OTHER demand is made for Jamma Bane land, the partition deed would virtually apply to all the properties including the Jamma Bane land thereby constraining the persons belonging to the Kodava race to violate the customs and traditions of the Kodavas.

15.3. In this regard, she submitted that by reference to various sources which have been reproduced hereinabove viz., the Coorg Land Revenue Regulations, 1899 ['CLRR' for short] and authoritative books viz., Major General Rob. Cole, A Manual of Coorg Civil Law, G. Richter's Gazetteer of Coorg, Kodavas-a Pictorial by B.D. Ganapathy, Karnataka State Kodagu District Gazette' by Suryakanth Kamath, Land Systems of British India' by B.H. Baden Powell amongst others.

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NC: 2024:KHC:29383 AND 1 OTHER 15.4. That Kodavas are a patrilineal clan having a family name, which is also called the house name. The house name relates to an 'Aiyne Mane' which is the dwelling house of the family. All the members of the family reside together in the 'Aiyne Mane'. They being engaged in agricultural activities; they own lands called 'Warg land' (wet land). The 'Warg lands' are lands which are attached to a 'Bane'(dry land). The said 'Bane' is further classified as 'Jamma Bane' and 'UmbliBane. All these lands, the dwelling house belonging to the joint family is owned, possessed and enjoyed by all members of the joint family.

15.5. The property earlier stood in the name of the elder of the family known as 'Patedara' with the names of the other members of the family also entered into the revenue records, thus, evidencing right, title and interest of not only

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NC: 2024:KHC:29383 AND 1 OTHER the 'Patedara' but also of all the joint family members.

15.6. The Bane land though not initially belonging to the family, was allotted to the family by the Raja by issuing a 'Sisht' which was so issued for the services to be rendered by the Kodavas in the military campaigns of the Rajas. The Kodavas were part of the reserve army and could be called upon by the Raja to render military service as regards which the Kodavas were entitled to make use of the 'Bane land' without paying any tax as if they were the owners thereof.

15.7. With the passage of time and the advent of coffee plantation, the 'Jamma Bane' land which was to be used for grazing, manuring and certain incidental activities pertaining to agriculture where on an application was

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NC: 2024:KHC:29383 AND 1 OTHER permitted to be made use for activities other than the above viz., cultivation of coffee, once such permission was granted. The 'Jamma Bane' land was treated as alienated Jamma Bane and the land which was not so permitted continued to be unalienated 'Jamma Bane' land, which continued to be attached to the Warg land. These Jamma Bane lands whether alienated or unalienated continued to be in the possession, occupation and enjoyment of the Kodava family and as such, formed the property of the Kodava family.

15.8. In that background, it is contended that the entries having been made of all the members of the family in the revenue records, the property belonging to the entire family with each member of the family being a division holder, by way of the amendment, a partition being forced upon the family, there would be a

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NC: 2024:KHC:29383 AND 1 OTHER requirement to divide the property by metes and bounds for entry of the name of the members of the family into the revenue records since the very concept of a

division holder could be done away with, which confers rights on the entire family.

15.9. The submission of Sri. Vikram Huilgol, learned Additional Advocate General on behalf of the State is that there was no ownership of the property vested with the Kodavas insofar as Jamma Bane land is concerned whether alienated or unalienated. By way of the amendment, the Kodavas or the joint family is granted full ownership right as that of an occupant and as such, a beneficial amendment which acts in favour of the Kodavas. In terms of the amendment, there is no requirement of any partition being effected and/or a survey sketch being produced delineating the property falling

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NC: 2024:KHC:29383 AND 1 OTHER to the share of each of the family members for entry of their name in the revenue records. His further submission is that there is no mandate requiring partition of the property belonging to the Kodava race. The State has not sought to interfere with any of the customs, practices or tradition of the Kodavas. They can either continue to be joint family holders or partition as per their choice. There is no compulsion for a partition by virtue of the impugned amendment. 15.10. It is in that background of the above, I have to answer the points raised.

15.11. It is not in dispute that the Kodavas are a military race and had provided military services to the Raja for a time immemorial. It is also not in dispute that the Raja could call upon the Kodavas to render military services and during the time that such military services was not

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NC: 2024:KHC:29383 AND 1 OTHER rendered, there was no obligation on part of the Raja to make payment of any salary to the Kodavas. It is in that background that the land was granted to the Kodavas by the Raja in the form of Jamma Bane land by issuance of a Sanad permitting the Kodavas to make use of the land along with their Warg land for the purposes of grazing, manuring, etc. Thus, these lands were essentially not one which belonged to Kodavas but belonging to the Raja who by way of a Sanad granted a licence to the Kodavas to make use of the land appurtenant to their own land as regards which no tax was liable to be paid by the Kodavas. The usage of the land as also an exemption from making payment of any tax was on account of the military services required to be rendered by the Kodavas to the Raja as and when called upon. The Jamma Bane land though enured to the

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NC: 2024:KHC:29383 AND 1 OTHER benefit of the Kodava family and could be used, there is no absolute ownership confirmed on the Kodavas by such Sanad or license to make use of the land.

15.12. There can be no dispute in respect of various authoritative texts cited by Smt. Sarojini Muthanna. All those texts only indicate that the Jamma tenure or the bane land are part of the land of Kodavas. The issue in the present matter is not as regards the Jamma tenure or bane land or the

entitlement of the Kodava family to use the Jamma land appurtenant to their land. That right is well recognised and the Kodava family has been held to be entitled to make use of the Jamma land appurtenant to the Warg land. There is also no dispute as regards the payment of land revenue or concession in payment of land revenue since that is not affected by the amendment per se.

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NC: 2024:KHC:29383 AND 1 OTHER 15.13.A Full Bench of this Court in Cheekere Poovaiah's case while dealing with sub-soil rights, more particularly mines and minerals, came to a conclusion that those mines and minerals would belong to the Government and further came to a conclusion that there is no ownership right of the holder in respect of Jamma Bane land either privileged or unprivileged. An exception is however made as regards alienated bane land, in that, if the said land had been alienated under the orders of the authorities passed under Rule 136 of the CLRR, the holder of such alienated bane would become entitled to cultivate the bane land as a separate holding on payment of full assessment being entitled to full rights. In the event of the land not being alienated, then whether privileged or unprivileged, it is only a right of usage which is vested with the occupant.

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NC: 2024:KHC:29383 AND 1 OTHER 15.14.The above being the finding of the Full Bench, it is clear that all sub-soil rights as also right to trees etc., vested with the Government and the occupant had only the right for grazing, manuring, collection of firewood and/or incidental agricultural activities carried out in respect of his/their Warg lands. Insofar as alienated Jamma Bane land, the persons would be a full owner. By way of the amendment, it is seen that even as regards privileged or unprivileged Jamma Bane land, occupancy rights are recognised in terms of the amendment. As a consequence thereof, full assessment is required to be paid in respect of this Jamma Bane land, including unalienated Jamma Bane land as regards which occupancy rights have been recognised under sub-section (20) of Section 2.

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NC: 2024:KHC:29383 AND 1 OTHER 15.15.Insofar as partition or division of the property is concerned, that is a matter which lies in the sole discretion of the family members. If the family members wish to continue as a joint family for all time to come, there is no embargo on doing so. However, the Kodavas are also governed by the Mitakshara law of succession. Each member of the family would be entitled to assert his/her right in respect of the property of the family and there cannot be an embargo imposed by the State on the members of the family not to partition and/or divide the property among themselves.

15.16.The amendment as aforesaid only confers complete ownership rights of the property which is beneficial in nature. The aspect of whether the family members want to carry out a partition or not is left to the wisdom and sole discretion of the family members.

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NC: 2024:KHC:29383 AND 1 OTHER 15.17.The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that the impugned amendment which has been now effected is contrary to the customary practices of the Kodavas. Hence, on that ground she seeks for a declaration that the amendment is unconstitutional. For this purpose, she refers to Article 13 of the Constitution and contends that in terms of Clause (a) of sub-clause (3) of Article 13 of the Constitution, law would include custom or usage and therefore, no amendment could be made to a Statute contrary to the custom or usage. Article 13 of the Constitution is reproduced hereunder for easy reference:

13. Laws inconsistent with or in derogation of the fundamental rights.--(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

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NC: 2024:KHC:29383 AND 1 OTHER (3) In this article, unless the context otherwise requires,--

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. [(4) Nothing in this article shall apply to any amendment of this Constitution made under article

368.] 15.18.What Article 13 of the Constitution prescribes is that law cannot be inconsistent with or in derogation of the fundamental rights with reference to the law introduced prior to coming into force of the Constitution. Sub-Clause (1) of Article 13 of the Constitution deals with all the laws in force prior to coming into force of the Constitution and mandates that any such law in force in the territory of India inconsistent with the provisions of Part III of the Constitution shall to the extent of inconsistency be void. Therefore, Sub-Article (1) of Article 13 of the

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NC: 2024:KHC:29383 AND 1 OTHER Constitution would apply only in respect of laws already in force and them being inconsistent with Part III. Needless to say, sub-clause (1) of Article 13 of the Constitution would not apply to the present facts and situation. Sub-Clause (2) of Article 13 of the

Constitution mandates that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of sub-clause (2) of the Constitution shall to the extent of the contravention, be void, that is to say, that any new law brought about by the State shall not be in contravention of Part III and if there is any violation of Part-III by any law brought into force, to that extent, the new law would be void.

15.19. Sub-Clause (3) is virtually a definition clause and distinguishes between law and law enforced. Clause (a) of sub-clause (3) of Article

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NC: 2024:KHC:29383 AND 1 OTHER 13 of the Constitution indicates that law would include any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having the force of law. Clause (b) of sub-clause (3) of Article 13 of the Constitution deals with law in force and includes law passed by the Legislature or other competent authorities in the territory of India before the commencement of the Constitution not previously repealed and as such, deals with laws in force as on the date on which the Constitution came into force. Hence, Clause (b) of sub-clause (3) of Article 13 of the Constitution would also not be applicable to the present facts.

15.20. Insofar as Clause (a) of sub-clause (3) of Article 13 of the Constitution as mentioned above, it is virtually a definition clause defining what law would mean and does not indicate that a custom or usage cannot be overridden or

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NC: 2024:KHC:29383 AND 1 OTHER substituted by a law. Reading of Clause (a) of sub-clause (3) with sub-clause (1) and sub-clause (2) of Article 13 of the Constitution would only indicate that any law shall not be inconsistent with or in derogation to Part III of the Constitution. Clause (a) of sub-clause (3) of Article 13 of the Constitution does not in any manner save a custom or usage from any statutory intervention by the Parliament or the Legislature. It only mandates that no custom or usage shall be inconsistent with or in derogation of Part III of the Constitution.

15.21. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General, a law enacted by the Central Parliament or State Legislature cannot be declared unconstitutional unless it is in flagrant violation of the provision of the Constitution. For that purpose, there are several tests that have been laid down in

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NC: 2024:KHC:29383 AND 1 OTHER numerous decisions of the Hon'ble Apex Court. There is no decision that has been placed on record by the Petitioner to indicate that substitution or cancellation of a custom or usage would be a ground to challenge the constitutional validity of a legislation that is contrary to the custom or usage of a particular class of persons.

15.22. As held by the Hon'ble Apex Court in Rakesh Kohli's case (*supra*) and Ashok Kumar Thakur's case (*supra*), as to what is required for a statute to be declared as unconstitutional, and the following are to be fulfilled:

- i) It is violative of Article 14 of the Constitution;
- ii) Violative of the constitutional provision;
- iii) The appropriate legislature did not have the competence to make the law;

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NC: 2024:KHC:29383 AND 1 OTHER

- iv) That it violates in particular the fundamental rights enumerated in Part III of the Constitution.
- v) If the statute is so arbitrary or unreasonable that it must be struck down.
- vi) The term 'arbitrary' to be read as 'discriminatory'
- vii) It unreasonably restricts the fundamental rights under Article 19 of the Constitution etc.,

15.23. As held by the Hon'ble Apex Court in Binoy Viswam's case (*supra*), there is a three step process required to be resorted to by a Court of Law:

- 1) Examine as to whether the impugned provision in a legislation is compatible with the fundamental rights or the constitutional provisions or it falls foul of the federal

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NC: 2024:KHC:29383 AND 1 OTHER distribution of powers? If it is not found to be so, no further exercise is needed to be done and the challenge would fail. If it is found that the Legislature lacks competence, no further enquiry is needed and such a law is to be declared as ultra vires the Constitution.

- 2) If the impugned provision is violative of the fundamental rights or other constitutional rights;
- 3) If the first phase of enquiry is against the statute, then in the second phase, the Court would have to undertake the exercise to see if the impugned provision can be saved by reading it down so as to bring it in conformity with the provision of the Constitution, if possible to do so.
- 4) If the second stage is not possible, then in that event if the offending portion of the statute is severable, the court ought to/may strike down such a severed portion, if not, strike down the entire impugned provision as unconstitutional.

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NC: 2024:KHC:29383 AND 1 OTHER 15.24.In the present case, it is not the case of the Petitioner that the State Legislature does not have the power to amend the Karnataka Land Revenue Act. The ground of challenge as indicated above is only as to whether, by way of the amendment, the customs, traditions and usage are infringed. As referred to supra and as detailed out in the aforesaid decisions of the Hon'ble Apex Court, such a ground is not available.

15.25.The Hon'ble Apex Court in the Animal Welfare Board of India's case (supra) has categorically come to a conclusion that a provision or a statute cannot be overridden by a traditional or cultural event. In that matter, the Hon'ble Apex Court was ceased of the challenge to a ban on Jallikattu and came to a conclusion that the practice of Jallikattu was violative of the Prevention of Cruelty to Animals Act, 1960.

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NC: 2024:KHC:29383 AND 1 OTHER This case would be an illustration of a legislation overriding a tradition or a practice resorted to by the general populace 15.26.There are several such enactments which have been brought into force to get rid of social evils. Some of the prominent ones that could be referred to are the Dowry Prohibition Act, Child Marriage Act, Hindu Succession Amendment Act thereto, POCSO Act, etc. All these Legislations in some manner or the other have been brought into force by the Parliament and/or by the State legislature to prohibit or in some cases criminalise certain customs and traditions that have been followed. It is up to the legislature in its wisdom to decide on which custom, practice or tradition is acceptable, being in accordance with the requirement of the Constitution and which are in violation of the fundamental rights enshrined under the Constitution.

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NC: 2024:KHC:29383 AND 1 OTHER 15.27.If any such social, custom, practice or tradition is violative of the fundamental rights enshrined under the Constitution in terms of Clause (a) of Sub-Clause (3) of Article 13 by itself, those customs, traditions and usages would be void. However, the Parliament or the State Legislature can also bring about laws to criminalise such practices and/or prohibit such practices. Such action on part of the Centre or the State cannot be questioned only on the ground that the legislation or the Statute brings about a situation to negate a custom or tradition.

15.28.The contention that the CLRR and KLRA recognise, provide and protect the customary laws of Kodavas is again misconceived. The submission made by Ms. Sarojini Muthanna, learned counsel for the Petitioners that there is a prohibition for alienation of the Jamma Bane

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NC: 2024:KHC:29383 AND 1 OTHER land which forms part of the ancestral land on account of customs and traditions and is protected under CLRR and the subsequent KLRA is not borne out by records.

15.29.A perusal of Section 45 of the CLRR would indicate that even under the CLRR, there is a possibility of permission from the Assistant Commissioner for alienation of the lands and it is only when such permission from the Assistant Commissioner is not obtained that summary eviction in case of alienation without such permission is made can be resorted to. Thus, Section 45 of the CLRR lays down the consequences of alienation without permission of the Assistant Commissioner and does not in any manner impose any restriction or prohibition on alienation.

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NC: 2024:KHC:29383 AND 1 OTHER 15.30.Section 100 of the CLRR also speaks of transfer with the previous sanction of the prescribed authority and does not impose a prohibition on transfer but makes it only conditional upon permission being granted.

15.31.Though the CLRR is recognized by the KLRA and CLRR itself did not recognize any prohibition, the question of the KLRA recognizing any prohibition to support customary laws of the Kodavas would not arise.

15.32.Article 245 of the Constitution of India which has been pressed into service to challenge the constitutional validity of the amendment would also not in my considered opinion apply since the same provides only for powers of the Parliament to make laws for the whole or any part of the territory of India and the legislature of a State to make laws for whole or any part of

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NC: 2024:KHC:29383 AND 1 OTHER the State. The State Legislature having made the impugned laws which have an effect within the State of Karnataka cannot be said to fall foul of Article 245 of the Constitution. 15.33.The decision in Kerala Education Bill, 1957 was one rendered in a situation relating to equality under Article 14 of the Constitution and are relatable to Article 29 and 30 of the Constitution which relates to cultural and educational rights.

15.34.Though the Kodavas could be considered to be a minority not only in the State of Karnataka but across the country, the said provisions could be attracted only if there was any violation of the fundamental rights of the Kodavas made on account of the amendment. Except to contend that there is a violation of the customary laws, there is no other further

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NC: 2024:KHC:29383 AND 1 OTHER ground made out as regards violation of Article 28, 29 and 30 of the Constitution to make them applicable to hold the amendment to be in violation of the Constitution.

15.35.The decision in Sardar Syedna's case also in my considered opinion would not be applicable for the reason that, the decision was relating to a practice to propagate a religion and its religious practices wherein the Head of the Muslim Bohra community was conferred certain rights and powers to excommunicate persons of the community who did not adhere to their directions. This was held to be an essential practice in order to maintain the discipline of the Muslim Bohra community and in that background the practice was upheld by the Hon'ble Apex Court. There is no such question involved in the present matter. Non-alienation of land vested with the family is not one which

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NC: 2024:KHC:29383 AND 1 OTHER is required for the purposes of propagating the Kodava race and neither are the Kodavas recognised as a separate religion in contrast to Hinduism, further, they are also governed by the Mitakshara School of Hindu Law. As observed supra, the various treatises and authoritative texts which have been referred to by Ms. Sarojini Muthanna, learned counsel for the Petitioners themselves envisage the possibility of alienation albeit with prior permission/sanction.

15.36.The reference to Article 51A(f) of the Constitution to contend that there is a duty cast on the State to preserve the rich heritage and composite culture cannot be disputed. Preservation of rich heritage and composite culture would require that such a practice has been recognised and continues to be in force even as of today. In this case, the practice

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NC: 2024:KHC:29383 AND 1 OTHER relates to the non-alienation of a joint family property. As referred to Supra, at the cost of reputation, it is once again reiterated that there was never any prohibition for alienation so long as prior sanction is obtained and this being in the nature of a condition attached to a land tenure cannot be contended to be an essential customary, custom or practice of the Kodava race. Thus, Article 51A(f) of the Constitution also would not be applicable to the present case.

15.37.The submission of Smt. Sarojini Muthanna, learned counsel for the Petitioners, is that the customary law is recognised under the CLRR and as such, the partition of the property and subsequent alienation, if any, made by the person to whom the said portion of the property falls to the share would be violative of Section

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NC: 2024:KHC:29383 AND 1 OTHER 45 of the CLRR, since the property is required to be enjoyed by all members of the family, cannot also be countenanced inasmuch as by the recognition of full occupancy rights in terms of sub-section (20) of Section 2, the entire family would become the owner of the property. The ownership is still not vested with individual members of the family in terms of the amendment.

15.38.Insofar as the further contention of Smt. Sarojini Muthanna that without entry of the name of each of the family members, no loan could be obtained since no guarantees could be issued by the family members is again misconstrued. As afore observed, the property continuing to be in the name of the family, the names of the members of the family would also be added to the revenue records. Their name being present in the revenue records, would

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NC: 2024:KHC:29383 AND 1 OTHER always enable them to apply for and obtain necessary loans from the concerned banks. 15.39.Insofar as there being a prohibition for sale of the property outside the patrilineal clan, the pre-emption rights which are available under Section 4 of the Partition Act, 1893 could be exercised by the members of the patrilineal clan.

15.40.Her submission that until now taxes were exempted on the property and by way of the impugned amendment, taxes are required to be paid cannot be a ground to challenge such statutory amendment. A fiscal aspect of any of act or otherwise cannot be a ground for challenge. Even otherwise, the exemption from making payment of tax which was granted to the Kodavas on account of the military service expected to be rendered by them to the then

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NC: 2024:KHC:29383 AND 1 OTHER Raja and subsequently to the British, there is no such compulsion today for the Kodavas to render military service. Such service today is voluntary and not a forced service as was under

the Raja.

15.41.It would, however, be required for me to recognise and take cognisance of the glorious service rendered by members of the Kodava race to the armed forces. I would also have to commend the members of the Kodava race for having voluntarily rendered such glorious service and protecting the motherland. That does not, however, mean that members of the Kodava race would be forced to serve in the military, in today's time and age, under the Constitution of India, there is no concept of forced conscription recognised in India.

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NC: 2024:KHC:29383 AND 1 OTHER 15.42.The invocation made of Article 13 of the Constitution of India to contend that there is a violation of customary rights, since customs or usage are deemed to be law under Clause (3)(a) of Article 13 of the Constitution of India would also not enure to the benefit of the Petitioners since the reference to Clause (3)(a) of Article 13 of Constitution of India relates to Clause (1) of Article 13 of Constitution of India which speaks of all laws in force in the territory of India and mandates that any law in force which is inconsistent with the Provisions of Part- III shall to that extent of inconsistency be void. Thus, in terms of Clause (1) of Article 13 of the

Constitution of India, any law inconsistent, including customary law or usage would be rendered void. Clause 3(a) would not amount to a restriction or embargo on the State to enact any law contrary to the customs and usage.

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NC: 2024:KHC:29383 AND 1 OTHER 15.43.The decision in Jagdev Singh Sidhanti's case was in relation to elections and malpractice where the candidate had extorted for votes to be granted to him in order to protect a particular language. The same would also have no bearing in the present facts and circumstances.

15.44.A perusal of Rule 164 of the CLRR would make it clear that there is in fact no prohibition for alienation of the Jamma land. The only requirement was that the person seeking for sale was required to approach the Assistant Commissioner. The Assistant Commissioner could grant permission for sale, gift, mortgage or release as contained therein. Thus, it is clear that even under CLRR, there is a possibility of alienation recognised and therefore it cannot be now contended that the customs and traditions

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NC: 2024:KHC:29383 AND 1 OTHER prohibit the alienation of the property belonging to the joint family.

15.45.The decision in C.A. Nanjappa's case is relied upon to contend that in terms of section 145 of the CLRR, the prohibition for partition is not one which can be a ground for challenge of the amendment to sub-section (20) of Section 2 as also the amendment to Section 8o. By virtue of the amendment to sub-section (20) of Section 2, full occupancy rights/full ownership is granted. By virtue of amendment to Section 8o, the assessment/tax is collected. Neither of these two amendments would explicitly or implicitly permit partition. The aspect of partition, if sought for by any member of the family, the same could be contested on the basis of Section 145 of the CLRR or any other grounds which may be available to the parties.

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NC: 2024:KHC:29383 AND 1 OTHER The said ground which has been contended to be the natural consequences of the amendment being made, cannot be accepted, more so, in view of the submission made by the learned Additional Advocate General, and in view of the affidavit filed by the Under Secretary, Revenue Department that there would be no requirement for producing a partition deed or a survey sketch/11-E sketch for the purpose of entry of a member of a family in Column No.9 of the RTC. Thus, without any partition being effected, the names of any family member which has been missed out or which is required to be added on account of birth etc, and any name of a member required to be deleted on account of death etc, can be so done without a partition being effected. Thus, I am of the considered opinion that the impugned amendments do not in any manner offend Section 195 of the CLRR

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NC: 2024:KHC:29383 AND 1 OTHER and there is no mandatory requirement for partition to be effected amongst the Kodava family, post the impugned amendment. 15.46.Insofar as customs and traditions are concerned, the submission made by the learned Additional Advocate General that even during times of the Raja and/or the British rule, a partition could be effected as also properties sold to a third party is sought to be substantiated by reference to a Book 'Religion and Society Among by the Coorg -South India by M.N. Sreenivas' wherein it is stated that the seller could pay 5% of the market value of the property as Nazarana to the State, for such sale, which was subsequently enhanced to 20%. In this regard, even Rule 164 of the CLRR empowered the Assistant Commissioner to permit the alienation of the

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NC: 2024:KHC:29383 AND 1 OTHER jamma, jamma umbli, bhatamanya and jahghir lands by way of sale, gift, mortgage or release of maintenance shares etc. Thus, in my considered opinion, it cannot now be contended that there was always an embargo for a member of a Kodava family to alienate his property to a third party and/or for partition to be effected amongst the members of the Kodava family. Thus, in my opinion, there is no custom, usage or tradition, which can be said to be in existence prohibiting the alienation or partition of the property of a Kodava family. 15.47.The decision of the Hon'ble Apex Court in Adithayan's case and Animal Welfare Board of India's case would in clear and categorically terms establish that it is a legislative enactment which is required to be given effect to, even if, there are customary practices which have been prevalent and accepted for a long period of

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NC: 2024:KHC:29383 AND 1 OTHER time. It is the legislature which is supreme and by way of the legislative enactment where a particular custom is overridden, prohibited or regulated, the same would not be a ground for challenge unless the same is without legislative competence or is violative of the fundamental rights guaranteed under Part-III of the Constitution.

15.48.In the present case, there being no doubt as regards the competence of the legislature, more so, when in terms of Entry 5 of List 3 of Schedule-VII, it is the State which can enact laws relating to marriage, divorce, succession, joint family partition, land laws etc. 15.49.The origin of Jamma Bane land being on account of issuance of a Sanad by the Raja allotting or making available certain land for the use of a member of the Kodava race or a

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NC: 2024:KHC:29383 AND 1 OTHER Kodava family. The land granted by the Raja being the wet land-warg land, there is only a right granted to such Kodava family or a person belonging to the Kodava race to make use of the appurtenant land for the purpose of grazing, manuring and any other agricultural activities. This land being called Jamma Bane land went with the Warg land and

formed a kind of land tenure inasmuch as on account of the right to use this land, the member of Kodava race and/or Kodava family was required to render military service when called upon, and in respect of this land, either tax was not required to be paid or a concession in tax was made available. Subsequently, the Jamma Bane land was classified as privileged and unprivileged. The privileged land being capable of being used for the purpose of growing coffee, which arose with the advent of coffee plantation in the

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NC: 2024:KHC:29383 AND 1 OTHER country, and more particularly in that region. The aspect of privileged and unprivileged land came about on account of changed circumstances and as a modification of the land tenure of Jamma Bane. Subsequently, some of the lands were permitted to be alienated as regards which full assessment was required to be paid and the lands which were not alienated continued to be unalienated entitled to concession in assessment. This classification of alienated land is also a further modification of the land tenure. The Kodava family having established a Kaimada or a temple for ancestors is not a part of the land tenure, nor is demarcation of Thutengalas part of the land tenure. This is only a manner of utilisation of the bane land for such purposes which are non- agricultural in nature, since those lands were not fit for agricultural use, mainly for the reason

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NC: 2024:KHC:29383 AND 1 OTHER that during those times, use of lands for agriculture would only be from wet lands and not dry lands.

15.50. Thus, I answer Point No.1 by holding that neither a Statute nor an amendment to the Statute can be questioned on the basis of the Statute or amendment thereto being violative of customs, usage or traditions. Any challenge to a statute or amendment to a statue can only be made on the basis of the available grounds as indicated above, and as laid down by the Hon'ble Apex Court in several decisions.

16. Answer to Point No.2: Whether the Jamma Bane lands being incapable of alienation is a customary practice, or is it a concomitant requirement of a land revenue system? 16.1. Ms. Sarojini Muthanna, learned counsel for the Petitioners has sought to contend that the Jamma Bane lands are incapable of alienation,

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NC: 2024:KHC:29383 AND 1 OTHER there is a prohibition on alienation. If the said land is permitted to be alienated, the entire edifice of the family system of Kodavas would be destroyed. This aspect and contention would have to be examined from the law and documents on record; this has also, to some extent, been considered by me in answer to Point no.1.

16.2. A perusal of the Karnataka State Kodagu District Gazette by Suryakanth Kamath relied upon by the Petitioner would indicate that there was a recommendation made not to permit the Coorgis to sell their property, since that may result in impoverished Coorgis to dispose off the land to Europeans or natives of Mysore from whom a service of the like rendered by Coorgis could not be expected. That is to say that the permission was not denied on the basis of any customary practice but only on the ground of

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NC: 2024:KHC:29383 AND 1 OTHER keeping the Kodavas sub-servient and render military services which they were rendering to the British by granting an exemption of payment of taxes. The lands as could be seen were classified as Sagu land and Jamma land, which classification is made for the purpose of land tenure and imposition of land revenue. 16.3. As could be seen from the reference made by the learned counsel for the Petitioner herself relating to the publication by B.H. Baden Powell in 'Land Systems of British India'. The reference made to Jamma land is as Jamma tenure and reference made to Sagu is as regards Sagu tenure. The Jamma Bane land was not held to belong to the tenure holder but belonged to the Government. The bane land being appurtenant to the Jamma land or the Sagu land were used for incidental purposes. Subsequently, with the introduction of coffee,

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NC: 2024:KHC:29383 AND 1 OTHER when the land was sought to be cleared for growing coffee i.e., when the lands were being disposed to coffee planters and it is in that background, that certain Rules were introduced permitting the Jamma Bane land to be used for coffee cultivation provided no large trees were removed.

16.4. Section 189 of Rob Cole's Manual deals with what constitutes a division and prescribes that a member is not to be considered as divided on the simple execution of a deed but he must have taken a share and lived apart. 16.5. Thus, even as per Rob Cole's manual, a division of family is permitted. In terms of Section 192 of Rob Cole's Manual, if a division has taken place, ceremonies are performed by the divided member in his own residence. This again indicates that division was permissible.

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NC: 2024:KHC:29383 AND 1 OTHER 16.6. From the above, it is seen that the classification of the land is on the basis of the land tenure system and not on the basis of customs or usage of Kodavas as sought to be contended by Ms. Sarojini Muthanna, learned counsel for the Petitioners.

16.7. In that view of the matter, the concomitance of the land tenure system would equally apply to Jamma Bane land and not only the customs and traditions.

16.8. Thus, I answer Point No.2 by holding that non-

alienation of the Jamma Bane land and the said land going along with the Jamma land is a concomitance of the land revenue system and not based on customary practice.

17. Answer to Point No.3: Whether by way of the impugned amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, 1964, there is a violation of any

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NC: 2024:KHC:29383 AND 1 OTHER customary practice, usage or tradition of the Kodava race?

above, having come to a conclusion that there is no such essential customary practice requiring that alienation of a joint family property is prohibited and having come to a conclusion that the permission which is required to be obtained under the earlier CLRR and now the KLRR by a member of a Kodava family to alienate a property is a condition of land tenure, I am of the considered opinion that by way of the amendment to sub-section (20) of Section 2 and Section 80 of the Karnataka Land Revenue Act, there is no violation of any customary practice, usage or tradition of the Kodava race. 17.2. The decision in Kerala Education Bill, 1957 was one relating to minorities and the definition thereof in terms of Article 25, 26, 29 and 30 of

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NC: 2024:KHC:29383 AND 1 OTHER the Constitution of India with reference to educational institutions and the fees collected therein. The said decision would not in my considered opinion be applicable to the present case. The customs and traditions which were considered in the Kerala Education Bill matter was for the purpose of determination of who is a minority and not otherwise.

17.3. The decision in Virendra Nath Gupta's case also dealt with a linguistic minority institution on the basis of the Article 29 and 30 of the Constitution of India. The same would also have no bearing in the present matter for the same reason mentioned above.

17.4. The concept of privileged and unprivileged tenure is also explained hereinabove. Privileged is when no assessment is required to be paid and unprivileged is one where assessment is

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NC: 2024:KHC:29383 AND 1 OTHER required to be paid for usage by the Kodavas. By way of the amendment, the distinction between privileged and unprivileged has also been removed. The Jamma land which had been alienated earlier continues to be under the ownership of the respective purchaser who if a Kodava or not, would have obtained necessary rights of ownership.

17.5. By way of the amendment, even the unalienated land would now vest in the family as full ownership. Thus, I am of the considered opinion that this is a benefit which is provided to the members of the Kodava race and by virtue of amendment to sub-section (20) of Section 2, full ownership right as an 'Occupant' is granted to the members of the Kodava race and/or the family

owning the Jamma Bane land, privileged or unprivileged. The amendment to sub-section (20) of Section 2 being a beneficial

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NC: 2024:KHC:29383 AND 1 OTHER amendment conferring full ownership rights cannot be said to be in violation of the customs, traditions and/or practices.

17.6. The customs and practices that Smt. Sarojini Muthanna, learned counsel for the Petitioners has contended is as regards to common usage of the land belonging to the family, common ownership of the said land and there being an embargo on partitions being effected among the family members.

17.7. The amendment per se does not in any manner deviate from the above rights. The amendment does not require members of a Kodava family to execute a partition deed and/or produce a survey sketch alienating the partition among the family members. Insofar as this contention is concerned, an affidavit has been filed by the Under Secretary to the Revenue Department

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NC: 2024:KHC:29383 AND 1 OTHER stating that there would be no requirement to produce a partition deed or a survey sketch/11- E sketch for entry of the name of a family member in the revenue records so long as the family tree and/or documents evidencing that the person is belonging to that family is produced, the name of such person would be entered in the revenue records. This would answer the apprehension on part of the Petitioners inasmuch as the Under Secretary, Revenue Department, has categorically stated on oath that no partition deed is required nor is a survey sketch/11-E sketch required to be produced.

17.8. It is only on the basis of requirement to produce the same that it has been contended that the customs, traditions and practices of the Kodavas are violated by the amendment. If there is no requirement to produce partition

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NC: 2024:KHC:29383 AND 1 OTHER deed and/or survey sketch/11-E sketch, the question of any customs or traditions being violated would not arise.

17.9. As submitted by Shri. Vikram Huilgol, learned Additional Advocate General and as per the affidavit of the Under Secretary, Revenue Department, there being no requirement of a partition to be effected and/or survey sketch or a 11-E Sketch being required to be furnished by way of the amendment, the property continues to be that of the joint family , and there would be no division of the property by virtue of the amendment simplicitor. The choice of continuing to be part of the joint family and for the property to be continued as a joint family property is that of the joint family members. The amendment per se does not require any such partition. Thus, there would be no

violation of customary law or Section 45 of

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NC: 2024:KHC:29383 AND 1 OTHER CLRR which is also now part of the Land Revenue Act.

17.10. Insofar as the submission that in the joint family properties, there are Kaimadas [temple for ancestors] and Thutengalas [family graveyard] which are to be enjoyed by all the members of the family. Firstly, as afore observed, there would be no partition by way of the amendment. Secondly, even if the members of the family wish to partition, suitable arrangements could be made insofar as Kaimada and Thutengala are concerned. That being a private arrangement between the private parties, the amendment cannot be questioned in that regard. The amendment does not force anyone to partition the properties, more so the Kaimada or the Thutengala. In the event of a partition suit being filed all contentions as are available can be raised.

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NC: 2024:KHC:29383 AND 1 OTHER 17.11. The exemption granted from making payment of taxes being primarily on the requirement of persons of the Kodava race to render military service to the Raja whenever called upon and now there being no such requirement, the claim for non-payment of tax would not survive, nor can it be countenanced in fact or law. By virtue of the amendment under sub-section (20) of Section 2, full ownership of the property is granted to the family, whereas under the Raja and/or the British, it was only a tenure in terms of the 'Jamma' tenure of bane lands which had been granted.

17.12. Now with full ownership of the land, an obligation for making full payment of taxes on the said land now fully owned by the family. This obligation cannot, in my considered opinion, be sought to be negated by relying on

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NC: 2024:KHC:29383 AND 1 OTHER the historical aspect of forced military service by members of the Kodava race.

17.13. The distinction sought to be made out by her in respect of privileged and unprivileged tenure would also no longer survive for consideration in view of the full ownership of land being granted by way of the amendment to sub- section (20) of Section 2.

17.14. The aspect of privileged or unprivileged tenure would have been necessary for consideration so long as the land was under a tenure and not under the full ownership. The tenure land could be alienated or unalienated. Alienated land could be used for growing coffee and unalienated land would continue to be used for activities incidental to agriculture. 17.15. Even though the alienated Jamma land less than 10 acres was free from assessment and

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NC: 2024:KHC:29383 AND 1 OTHER only land in excess of 10 acres would be assessed and tax payable, I am of the considered opinion that even the alienated Jamma land which continued to be owned by the Government and not by the family and now the land being owned by the family, such distinction of alienated or unalienated, privileged or unprivileged lands would not enure to the benefit of the Petitioners. 17.16.Insofar as the submission that partition would be a resultant of the rights conferred on individual members of the family which would lead to the breaking down of the Kodava family system and their customs or commercialization which would have an impact on the environmentally sensitive region, I am of the considered opinion that the use of the land would be regulated by the appropriate statute applicable thereto and any 'permission',

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NC: 2024:KHC:29383 AND 1 OTHER 'sanctions' or 'no objection' which are required for the utilisation of the land for commercial purposes, which may have an impact on the environment, would have to be adhered to and complied with by any and all members of the family.

17.17.The decision in Zoroastrian Cooperative Housing Societies' case is invoked to contend that a restriction amongst the Kodava race by custom, in respect of alienation of the property except within the patrilineal clan would be valid and that the same is taken away by amendment to sub-section (20) of Section 2 would also not be sustainable. Inasmuch as the said decision was rendered in the background of the fact that all the qualifications of a person to become a member of the society, the bye-laws mandating that it is only a member of Zoroastrian faith who could become the

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NC: 2024:KHC:29383 AND 1 OTHER member of the cooperative society and further impose restriction on alienation of the property to a person otherwise than belonging to the Zoroastrian faith. In that decision, persons had become members of the society voluntarily, accepted the terms and conditions and bye-laws of the society and therefore, the Hon'ble Apex Court came to a conclusion that all members are bound by the bye-laws of the society. 17.18.In the present case, though there may be a custom or a usage among the Kodava race not to partition the property, the same is a personal property right of the members of the Kodava race who may choose to partition or not, the joint family properties. The decision in Zoroastrian Cooperative Housing Societies' case would therefore not be applicable to the present facts and circumstances.

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NC: 2024:KHC:29383 AND 1 OTHER 17.19.The reference to DAV College Jalandhar's case for ascertaining linguistic minorities would also be of no assistance or relevance in the present matter. The amendment to sub-section (20) of Section 2 is not one based on linguistic minority, but as regards the nature of the Jamma Bane Land in Coorg, to either be owned by persons of the Kodava race or by persons belonging to any other community. 17.20.The impugned amendment is not made

with reference to a person belonging to the Kodava race or otherwise and as such, whether the members of the Kodava race would constitute a separate linguistic minority or not would not be relevant for the purpose of consideration in this matter.

17.21.Article 51(A) of Part-IV is reproduced hereunder for easy reference:-

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NC: 2024:KHC:29383 AND 1 OTHER 51A. Fundamental duties.--It shall be the duty of every citizen of India--

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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NC: 2024:KHC:29383 AND 1 OTHER 17.22.The reference to Article 51(A) of the Constitution of India being a duty cast on the State to preserve the heritage of our composite culture and the

invocation thereof to contend that the family traditions of the Kodava race, which is the culture of the Kodavas, in order to maintain their heritage, would also have no bearing in the present matter, since by way of the amendment, there is no violation of any culture or heritage. By way of the amendment, only the ownership rights are provided to the family.

17.23. It is for the members of the family to protect and preserve the rich heritage and culture of the family and the Kodava race. Merely by way of the impugned amendment, it cannot be stated that the State has violated its duty to preserve the rich heritage of the composite culture of the Kodava race.

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NC: 2024:KHC:29383 AND 1 OTHER 17.24. A submission is made that Jamma Bane lands are not government lands. It never belonged to the Raja or the British and the British did not hand it over to the Republic of India and as such, it is contended that the land would continue to be a private property and on that basis it is contended by relying upon Article 294

(b) of the Constitution of India that there is a duty cast upon the State to preserve these private properties with regards to the customs and traditions followed. Article 294 (b) of the Constitution of India only speaks of the rights, liabilities and obligations of the Government of the domain of India and the Government of each Governors' Province to be that of the Government of India and the Government of each corresponding States.

17.25. There is no such obligation contractual or otherwise, requiring the State to continue the

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NC: 2024:KHC:29383 AND 1 OTHER tenure of the land as Jamma Bane land so as to invoke Article 294 (b) of the Constitution of India. Similarly, Section 6 of the Karnataka General Clauses Act, 1989, which deals with repeal of any enactment, would also not be applicable since there is no repeal which has occurred. It is an amendment made in order to provide full right, title and interest in the property to members of the Kodava joint family.

17.26. The decision in Sardar Syedna Taher Saifuddin Saheb's case was one rendered in a situation where excommunication was permitted both as a punishment as also for preservation of religious denomination and it is in that background that it is held that the same is protected under Article 25 and 26 of the Constitution of India and the same cannot be questioned. That was a challenge made

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NC: 2024:KHC:29383 AND 1 OTHER specifically as regards power to excommunicate for self-preservation of religious denomination. In the present case, it cannot be said that the amendment to sub-section (20) of Section 2 would not preserve any religious denomination and/or bring about a division in the denomination which are already adverted to above. Hence, the decision in Sardar Syedna Taher Saifuddin Saheb's case would also not be applicable to the present facts.

17.27.In view of the above discussion, it is clear that by way of the amendment what is achieved is, to grant full ownership of the land to the Kodava family including all division holders i.e., all members of the family in a land which earlier had stood vested in the Government and the Government was the owner thereof. This conferment of full ownership in my considered opinion cannot be said to be in violation of any

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NC: 2024:KHC:29383 AND 1 OTHER custom, tradition or usage of the Kodava community.

17.28.As such, I answer point No.3 by holding that by way of the impugned amendment to subsection (20) of Section 2 and amendment to Section 8o of KLRA, 1964, there is no violation of any customary practice, usage or tradition of the Kodava race.

18. Answer to Point No.4: Whether by way of introducing a new enactment or by way of amendment to an already existing enactment, can the custom, usage or tradition be overridden, prohibited or cancelled? 18.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners in regard to this aspect is that a law cannot override any custom, usage or tradition. The answer to this has already been provided by Hon'ble Apex Court Adithayan's case and Animal Welfare Board of India's case, which would clearly and

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NC: 2024:KHC:29383 AND 1 OTHER categorically indicate that it is the Legislative enactment, which would have to be given effect to and that the same would override any customary practice, which had been prevalent and accepted for a long period of time. It is the Legislature, which is supreme and by way of legislative enactment any particular custom can be overridden, prohibited or regulated. Such overriding of a custom will not be a ground to challenge the legislation.

18.2. The grounds of challenge of a legislation have been detailed hereinabove and laid down by the Hon'ble Apex Court in many cases. An alleged isolation of custom is not a valid ground for such a challenge..

18.3. The above is also countenanced by several other enactments which have been enacted to get over certain social ills like dowry, child

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NC: 2024:KHC:29383 AND 1 OTHER marriage, etc. Though these were customs and traditions followed by different communities, by introduction of the Dowry Prohibition Act as also by introducing Section 498A into the erstwhile Indian Penal Code and now Sections 85 & 86 of the Bharatiya Nyaya Sanhita (for short, 'BNS'), the demand for dowry not only has been prohibited but has also been made a criminal offence.

18.4. Section 494 of the erstwhile IPC and now Section 82 of the BNS, criminalises bigamy. Bigamy also was a custom practiced by many. 18.5. By introducing the Prohibition of Child Marriage Act, 2006, marriage of a child/minor has been prohibited and criminalised.

18.6. Prior to the introduction of said enactment, child marriage was very much in vogue. Thus, all these enactments have been brought about

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NC: 2024:KHC:29383 AND 1 OTHER to bring about a social change, to overcome the social ills and to ostracize and/or criminalise certain practices which are contrary to the rights guaranteed under Part III of the Constitution of India.

18.7. These enactments though have done away with certain customs, usage or traditions by overriding, prohibiting or cancelling them have been held to be valid.

18.8. I answer Point No.4 by holding that by way of introducing a new enactment or by way of amendment to an already existing enactment, certain customs, usage or traditions as prevalent then, can be overridden, prohibited or cancelled by such a new enactment or amendment to an existing enactment.

19. Answer to Point No.5: Is the amendment made to Subsection (20) of Section 2 valid or not?

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NC: 2024:KHC:29383 AND 1 OTHER 19.1. Certain arguments have been advanced contending that this Court in Cheekere Poovaiah's case has not considered the customary rights and religious practices of the Kodavas and as such, the said judgment is not correct. The judgement in Cheekere Poovaiah's case having been rendered by the Full Bench of this Court, the said judgment would be binding not only on this Bench but also on the Petitioners. The said judgement having attained finality and no challenge having been made thereto.

19.2. Though in Cheekere Poovaiah's case, mineral rights and sub-soil rights were considered, the basic consideration of the matter was on account of the privileged and unprivileged Jamma Bane land as also the alienated and unalienated Jamma Bane land. The aspect of sub-soil rights and mineral rights was

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NC: 2024:KHC:29383 AND 1 OTHER considered in respect to payment of royalty to the Government. The rights of the Government as regards privileged and unprivileged Jamma Bane land as also alienated and unalienated Jamma Bane lands having been held to be vested with the State and the said properties having been held to be government land, it cannot now be contended by the Petitioners that the said judgment would only apply insofar as mineral rights or subsoil

rights. 19.3. In my considered opinion the said judgment would apply to all Jamma Bane lands as classified above. Be that as it may, as submitted by the learned Additional Advocate General, it is in order to provide full rights in the property which in Cheekere Poovaiah's case was held to be not available to the holder of Jamma Bane land, that the present amendment has been brought about. Thus,

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NC: 2024:KHC:29383 AND 1 OTHER even on this ground, the entire family becoming the owner of the land, the question of any of the rights of the member of a Kodava family being impinged upon does not arise. 19.4. As observed above, in answer to the earlier questions, as also in answer to the present question, by way of amendment of sub-section (20) of Section 2, what is sought to be achieved is grant of full ownership of land to the family and the members of the family. In effect, by way of amendment of sub-section (20) of Section 2, ownership rights are conferred on the occupant. This conferment of ownership rights is over and above the existing rights. It does not in any manner take away any right vested in the individual or the family. There is no disadvantage that the said amendment puts upon the family or any individual member of the family. The amendment to sub-section (20)

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NC: 2024:KHC:29383 AND 1 OTHER of Section 2 does not in any manner violate or impinge upon the rights guaranteed under Chapter 3 of the Constitution. In fact, by way of such amendment, full ownership rights have been granted.

19.5. There is equality brought about between the Kodavas and other occupants of the land inasmuch as the Kodavas could not have filed an application for regularization or grant of occupancy rights as regards Jamma Bane land prior to the impugned amendment. Whereas persons residing in other parts of the State could make application for grant of occupancy rights as regards the land which they were in occupation of in an authorized or unauthorized manner.

19.6. Thus, I answer Point No.5 by holding that the amendment of sub-section (20) of Section 2 is

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NC: 2024:KHC:29383 AND 1 OTHER not violative of any law. Therefore, it has to be held to be valid and in accordance with law.

20. Answer to Point No.6: Is the amendment to Section 8o of the Karnataka Land Revenue Act valid or not?

20.1. The contention Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the amendment to Section 8o, the Kodavas would now have to make payment of taxes/land revenue/land assessment as regards the Jamma Bane land which they were not paying earlier on

account of the tenure of the said land having recognized as a custom and as such, requiring the payment of taxes would be to the detriment of the Kodavas.

20.2. The amendment to Section 80 of the KLRA is in furtherance of the amendment made to sub-section (20) of Section 2 of the KLRA. By way of amendment to sub-section (20) of Section 2,

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NC: 2024:KHC:29383 AND 1 OTHER full ownership rights have been provided for. It is only prior to the grant of full ownership that the land was not fully assessed to tax. That is to say, by recognizing a concomitant of the land tenure, whereunder the land owner namely a Kodava was required to make payment of half the assessment in view of the military services required to be offered to the king. The condition of recognition of the land tenure and the condition for being eligible for reduced assessment was the requirement of the Kodava to provide military services to the King. As regards the land over which full ownership was not granted by the King to the Kodava or his family.

20.3. By way of amendment to sub-section (20) of Section 2 of the KLRA, firstly, full ownership rights have been granted to a Kodava family as regards the land owned by them and they

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NC: 2024:KHC:29383 AND 1 OTHER would be entitled to the usage of the said land as a full owner.

20.4. Secondly, the earlier condition for rendering military services is no longer in existence, since now, the recruitment made to any of the armed forces is on the basis of examination and selection process and not merely on the basis of holding the land as a Jamma Bane.

20.5. The decision relied upon in this regard in the Kunnathat Thatehunni Moopil Nair's case would also not enure to the benefit of the Petitioners. It was a case where the tax imposed was held to be violative of Article 19(1)(F) of the Constitution of India since the quantum of tax imposed was many times over the income from the forest land. That case was a challenge as regards the quantum and imposition of unreasonable restriction, which

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NC: 2024:KHC:29383 AND 1 OTHER could amount to being confiscatory in the event of default in making payment of taxes. That would not be the case here. The assessment of the land being on an agricultural basis, it is not the contention of any of the Petitioners that the said assessment is more than the income that could be earned.

20.6. By relying on Threesiamma Jacob's case, it is contended that the Hon'ble Apex Court has held that there is nothing in law which declares that all mineral wealth sub-soil rights vest in the State and further, ownership of sub-soil/mineral wealth should normally follow the ownership of the

land, unless the owner of the land is deprived of the same by some valid process. Relying on the same, it is submitted that Threesiamma Jacob's case impliedly overruled Cheekere Poovaiah's case insofar as the mineral rights are concerned. Even if

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NC: 2024:KHC:29383 AND 1 OTHER that may be, without expressing any opinion on the same, even if Cheekere Poovaiah's judgement were said to be overruled, the same would not enure to the benefit of the Petitioners insofar as the challenge to the amendment to sub-section (20) of Section 2 and amendment to Section 80 are concerned, since neither of these two amendments relate to any mineral or subsoil rights.

20.7. Even if the judgement in Threesiamma Jacob's case can be said to have overruled the observations made by the Full Bench of this Court in Cheekere Poovaiah's case as regards to subsoil and mineral rights, the basis of Cheekere Poovaiah's case is not taken away inasmuch as the finding in Cheekere Poovaiah's case that Jamma Bane land is government land and not individual personal property. That finding continues to hold the

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NC: 2024:KHC:29383 AND 1 OTHER field and has not been distinguished or overruled in Threesiamma Jacob's case. 20.8. By relying upon the decision in Rakesh Kohli's case, the learned Additional Advocate General has contended that it is only if a statute or amendment has been enacted without legislative competence or is in violation of any of the fundamental rights guaranteed under Part III of the Constitution of India that enactment can be struck down.

20.9. Even as regards a challenge under Article 14 of the Constitution of India when made, what the Court would have to see is whether the Act or amendment is violative of the equality clause or equal protection clause enshrined therein. His submission is that an enactment cannot be struck down by only stating that it is arbitrary or unreasonable. The same would have to be

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NC: 2024:KHC:29383 AND 1 OTHER established to be violative of the fundamental rights guaranteed under Part-III of the Constitution and only then, such a statute could be quashed and, on that basis, it is contended that the Petitioners have not been able to establish and/or satisfy this requirement. 20.10. The said decision of the Hon'ble Apex Court would answer the contention raised by Smt. Sarojini Muthanna, learned counsel for the Petitioners contending that the amendment is arbitrary and unreasonable on the ground that by way of the amendment a member of the Kodava family is now required to partition the property in order to make an entry of his name in the revenue records. Therefore, it is contended that it is unreasonable. The first aspect of requirement of partition and/or 11-E sketch having been dealt with hereinabove, if that aspect is eschewed, then the entire

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NC: 2024:KHC:29383 AND 1 OTHER arguments of Smt. Sarojini Muthanna insofar as the impugned amendment being arbitrary or unreasonable, would not stand.

20.11. It is clear from the reading of the judgements of the Hon'ble Apex Court in Rakesh Kohli's case, Ashoka Kumar Thakur's case, Binoy Viswam's case and Jaya Thakur's case that the scope of challenge to an act of legislation is limited. It is required for the person challenging an enactment or amendment passed by the legislature to establish that the said legislature did not have the competency and/or that the legislation is violative of Part-III of the Constitution of India. If a legislature had a competence to pass an enactment or an amendment, then, there would be no further requirement. It is only thereafter, that the aspect of whether there is a violation of rights guaranteed under Part-III of the Constitution of

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NC: 2024:KHC:29383 AND 1 OTHER India can be made. In the present case, there is no challenge to the competence of the legislature, but the challenge is only on account of the amendment allegedly violating fundamental rights, customs and tradition. 20.12. In view of my above reasoning, I answer Point No.6 by holding that the amendment to Section 8o of the KLRA is not violative of any constitutional provisions or any law and therefore is a valid law.

21. Answer to Point No.7: What is the effect of the impugned amendment?

21.1. The contention of Ms. Sarojini Muthanna, learned counsel for the Petitioners is that in view of the impugned amendment, firstly, there will be a breakup in the joint family system. Secondly, the properties will be alienated. Thirdly, as a consequence of both the above,

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NC: 2024:KHC:29383 AND 1 OTHER the customs and traditions of the Kodava race would be violated.

21.2. The decision in B. Mohammad's case, relied upon in this regard, would also not enure to the benefit of the Petitioners, since by way of the amendment no right is taken away, but a right of full ownership is conferred upon the Kodava family as regards the lands owned by them. The corresponding obligation being payment of assessment/taxes. The ownership right now conferred retrospectively, but the obligation on payment of taxes/assessment being prospective, i.e., from the date on which the amendment came into operation , the decision in B. Mohammad's case which relates to the retrospective amendment would not apply. 21.3. The decision in Kongera T. Appanna's case was one relating to the determination of cost of

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NC: 2024:KHC:29383 AND 1 OTHER timber wherein it was held that the timber on Jamma Bane land belongs to the Government and ratable distribution of the cost of timber was ascertained in the said matter. By virtue of the amendment, once the Kodava family is granted full ownership of the land. The ownership of the timber, standing trees, etc., on the said land will also vest with the said family/individual. That being so, the Government will not have any right, title or interest in the timbers, standing trees or otherwise on the said property requiring the calculations. Once the right of the family or occupant are registered pursuant to sub-section (20) of Section 2, the entire process of calculation of timbers, trees or otherwise situated in the Jamma Bane land, permission for their sale and appropriation of the amounts

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NC: 2024:KHC:29383 AND 1 OTHER thereof would no longer be required, unless any other statutory provision mandates so. 21.4. One other effect of the amendment would be that with the full ownership of the land being vested with the family, the Government would not have any right, title or interest over the said property.

21.5. All the trees situated thereon and produced thereof would vest with the owner of the land. The question of the Government claiming any seigniorage or the like, as regards the trees grown on the said land would not arise. Any permission required by the family or its members for cutting any specific trees would necessarily have to be obtained and the procedure and formalities related thereto be adhered to. However, the State cannot claim

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NC: 2024:KHC:29383 AND 1 OTHER any ownership of anything grown on the said land.

21.6. In view of my answers to the earlier points, having come to a conclusion that the entire family will be registered as an occupant of the Jamma Bane land, I am of the considered opinion that by way of the amendment, there will be no requirement of partition to be effected among the members of the family. This is also borne out by the affidavit filed by the Under Secretary to the Revenue Department, Government of Karnataka, wherein it is categorically stated that for the purpose of registration of the name of a family member in the RTCs, there would be no requirement for a partition to be effected and/or for 11-E sketch to be obtained as regards the area falling to the share of each individual family members.

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NC: 2024:KHC:29383 AND 1 OTHER 21.7. By way of amendment, what is now only achieved is that the entire family would be registered as the occupant of the land including Jamma Bane land. The names of all the members of the family would also be entered into in Column No.9 thereby recognizing the rights of the entire family in respect of the property owned by the family including Jamma Bane land.

21.8. Whether they partition or not, whether they continue as a single united family or not and in the event of a partition being effected, which portion of the property would come to which member of the family and the rights of each member of the family to offer prayers to their ancestors as also to be buried/cremated in the family property are not matters which are covered by the amendment. These are aspects which are best left to the wisdom of the family

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NC: 2024:KHC:29383 AND 1 OTHER and its members. If all the members want to continue to be joint, the family could continue as a joint family property exercising ownership rights over the entire property. If any member of the family were to want to separate, the same would have to be so done in accordance with an agreement between the parties or in accordance with law since the Kodavas are governed by the Mitakshara branch of the Hindu law and as such, would be governed by the Hindu Succession Act, 1956 as amended from time to time.

21.9. Ultimately the effect of the impugned amendment is to confer full ownership rights over the Jamma Bane land and does not in any manner compel any member of the family to partition/separate himself or herself from the family and/or for the property to be divided by metes and bounds.

22. Answer to Point No.8: What order?

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NC: 2024:KHC:29383 AND 1 OTHER 22.1. In view of my answer to all the points above, I do not find the amendment to be violative of any law, let alone the Constitution of India. The grounds of challenge made to the said amendment, therefore, fail. The Petition stands dismissed.

22.2. The concerned District Administration/District Revenue Authority is hereby directed to issue a circular giving clarity and stating in detail the due process for entering the names of the joint family land owners into the revenue records vis-à-vis the amendment to Sub-section 2o of Section 2 of the Karnataka Land Revenue Act, 1964. The same to be complied with, within 30 days from the date of receipt of this order.

Sd/-

JUDGE PRS

Leelamma vs State Of Karnataka on 30 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 5497 OF 2024
C/W
CRIMINAL PETITION NO. 2887 OF 2022
CRIMINAL PETITION NO. 2048 OF 2024

IN CRL.P NO.5497/2024

BETWEEN:

1. SUDEESH
S/O VELAYUDHAN,
AGED ABOUT 36 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

2. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. VELAYUDHAN
C/O KRISHNA,
AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FL00R,

NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJIPURA,
BENGALURU - 560 047.

PRESENTLY AT
UNIT 11/2 DALZIELL STREET
MADDINGTON 6109

REPRESENTED BY THE SPA HOLDER
VELAYUDHAN

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. VIDYA K.V.,
WIFE OF SUDHEESHA,
AGED ABOUT 28 YEARS,
VISHNU BHAVAN, NADUBHAGAM,
CHAMPAKKULAM P.O., NEDUMUDI
ALAPPUZHA
KERALA - 688 505

RESIDING AT NO. 100/5
2ND FLOOR, SHAKTHI MAHA GANAPATHI TEMPLE
ROAD, (OLD PANCHAYATH ROAD) BILLEKAHALLI,
DEVARACHIKKANAHALLI MAIN ROAD,
BENGALURU - 560 076

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

WORKING AT
NANO HOSPITALS,

NO.79, SRI. M. VISVESWARAYA ROAD,
NYANAPPANA HALLI, HULIMAVU, DLF CITY ROAD,
NEAR AREKERE SAIBABA TEMPLE,
BANGALORE - 560 076.

2. MASTER AADI-S
AGED ABOUT 3 YEARS,
REPRESENTED BY HIS MOTHER
SMT. VIDHYA K V
RESPONDENT NO.1 HEREIN

... RESPONDENTS

(BY SRI. PRADEEP KUMAR P D., ADVOCATE FOR R1 AND R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE PRESENT
PETITIONERS U/S 12 OF PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT IN CRL.MISC.NO.61/2023 PENDING
BEFORE THE M.M.T.C. - VI COURT, BENGALURU.

IN CRL.P NO.2887/2022

BETWEEN:

1. LEELAMMA
W/O VELAYUDHAN,
AGED ABOUT 56 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.
2. VELAYUDHAN
C/O KRISHNA,

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AGED ABOUT 65 YEARS,
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

3. K.V. SMITHA
W/O NIDESH N G.,
AGED ABOUT 30 YEARS,
R/AT NISHANIVAS,
NO.7, 13TH CROSS,
RA ROAD, EIJPURA,
BENGALURU - 560 047.

AS PER FIR
R/AT NO.206, 2ND FLOOR,
SA HEIGHT APARTMENTS,
DEVARACHIKKANAHALLI,
BENGALURU - 560 068.

4. SUJATHA
W/O AARONSHEEL
AGED ABOUT 32 YEARS,
RESIDENT OF 2 LOWMAN ST.,
THRONILE WA 6108

...PETITIONERS

(BY SMT. SHREYA S KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

2. VIDYA K V
D/o NOT KNOWN,
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1;
R2 SERVED)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE
PETITIONERS IN CRIME NO. 25/2022 FOR THE OFFENSES
PUNISHABLE U/S 498A,504 r/w 34 OF IPC NOW PENDING AT
EAST ZONE WOMEN PS., PULAKESHINAGAR POLICE STATION,
IN THE FILES OF VI ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE COURT AT BENGALURU.

IN CRL.P NO.2048/2024
BETWEEN:

SUDHEESH KV.,
S/O VELAYUDHAN K.,

AGED ABOUT 38 YEARS,
R/AT NO.206,
S.A. HEIGHTS APARTMENTS,
DEVARACHIKKANAHALLI,
BANGALORE 560 076,
PRESENTLY RESIDING AT
133/A, 38TH B CROSS,
26TH MAIN, JAYANAGAR,
9TH BLOCK, BANGALORE 560 069

...PETITIONER

(BY SMT. SHREYA S KUMAR, ADVOCATE)

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NC: 2024:KHC:30121
CRL.P No. 5497 of 2024
C/W CRL.P No. 2887 of 2022
CRL.P No. 2048 of 2024

AND:

1. STATE OF KARNATAKA
BY PULAKESHINAGAR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING.
BANGALORE 560 001
2. VIDYA K V
AGED ABOUT 27 YEARS,
AT NO. 1065, VIJAYA LAYOUT,
BENGALURU 560 076

RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE FIR AGAINST THE PETITIONER IN CR.NO.25/2022
FOR THE OFFENCE P/U/S 498A,504 R/W 34 OF IPC NOW
PENDING ON THE FILE OF THE VI A.C.M.M COURT AT
BENGALURU.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

Petitioners in the case at hand are the husband, his family members and the complainant wife. Proceedings that are called in question are setting criminal law into motion for the offences punishable under Section 498A, 504 read with 34 of Indian Penal Code. Inter-alia and the NC: 2024:KHC:30121 proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as DV Act for short).

2. It transpires during the pendency of the petition, the parties to the lis, i.e., husband and wife have settled the dispute amongst themselves by drawing up certain terms of settlement. In furtherance thereof, in all such settlement, the terms of settlement in the joint memo which supported by joint affidavit reads as follows:

JOINT MEMO "1. It is submitted that the marriage of the Petitioner No.1 with the Respondent No.1 herein was solemnized on 17-04-2019 at Alappuzha, Kerala, in accordance with Hindu religious rites, rituals and ceremonies. It is submitted that the Respondent No.2 is the minor child of Petitioner No.1 and Respondent No.1

2. Due to marital dispute in the said marriage, the Respondent No.1 herein had lodged a criminal complaint against the present Petitioners and his family members at the East Zone Women Police Station in Crime N00025/2022 for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City and had also filed a complaint under section 12 of the DV Act, against the Petitioners, now pending before the Ld.MMTC-VI, Bengaluru.

NC: 2024:KHC:30121

3. That, both the parties have agreed to settle disputes between them mutually. Based on such amicable settlement, both the parties have entered into memorandum of settlement dated 10-04-2024 in M.C.No.1158/2024, filed before the Ld.Principal Judge Family Court, Bengaluru.

4. It is submitted that the Petitioner No.1 has made a fixed deposit for the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) in the name of the Respondent No.2 at Karnataka Bank Ltd., Jayanagar Branch, Bengaluru, bearing no.0611500124163801, dated 04-04-2024 mentioning Respondent No.1 deposit. as guardian for the said fixed

5. That as per the mutually agreed terms, the Petitioner No.1 has agreed to pay an amount of Rs.2,00,000/- (Rupees Two Lakhs only) vide demand draft/RTGS/online fund transfer to the bank account of the Respondent No.1 before this Hon'ble Court and it was agreed that the Respondent No.1 will agree to co-operate in quashing Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the Petitioner's family and Petitioner.

6. Since the matter is amicably settled between the parties, the Respondent No.1 herein has no objection to quash the entire proceedings initiated against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504 r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrpatunga Road, Bengaluru City. The copies of the photo ID proofs of the Petitioners and Respondent No.2 are attached as Document No.1.

7. In view of the said settlement, this Hon'ble Court may be pleased to quash the FIR against the Petitioner and his family members in for the alleged offences punishable under section 498A, 504

r/w 34 of IPC, now pending in the file of Ld. VI Additional Chief Metropolitan Magistrate Court, Nrupatunga Road, Bengaluru City and to quash the NC: 2024:KHC:30121 entire proceedings against the Petitioners in Crl.Misc.No.61/2023 for the offence punishable under section 12 of Protection of Women from Domestic Violence Act, now pending before the MMTC VI Court, Bengaluru."

3. A condition in the affidavit so filed is quashment of entire proceedings against the petitioners in Crl.Misc.No.61/2023 for the offence punishable under Section 12 of DV Act pending before the MMTC VI Court, Bengaluru and quash the petitions in Crl.P.No.2887/2022 and Crl.P.No.2048/2024 filed by the petitioner's family with a prayer to quash the FIR in Cr.No.0025/2022 for the alleged offences punishable under Sections 498A, 504 read with 34 of IPC, pending on the file of VI Additional Chief Metropolitan Magistrate Court, Bengaluru.

4. In the light of the settlement arrived between the parties and the offences punishable are the ones as mentioned hereinabove are not heinous and not against the State and learned counsel for the respondent submits that as per the conditions stipulated in the settlement are fully paid, I deem it appropriate to accept the

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NC: 2024:KHC:30121 compounding application and terminate the proceedings against the petitioners in these petitions.

5. For the aforesaid reasons, the following:

ORDER i. Criminal Petitions stand disposed.

ii. Entire proceedings under Section 12 of Protection of Women from Domestic Violence Act, pending in Crl.Misc.No.61/2023 before the Metropolitan Magistrate Traffic Court - VI, Bengaluru and;

iii. Entire proceedings in Crime No.0025/2022 for the offence punishable under Sections 498A, 504 read with Section 34 of IPC pending at Fast Zone Women Police, Pulakeshinagara Police Station in the files of VI Additional Chief Metropolitan Magistrate Court, Bengaluru against the petitioners stands quashed.

Sd/-

(M.NAGAPRASANNA) JUDGE

Mahadeep Ray vs State Of Karnataka (By Hal Ps) on 8 August, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:31802
CRL.P No. 7641 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 7641 OF 2024

BETWEEN:

1. MAHADEEP RAY
AGED ABOUT 32 YEARS
S/O MANORANJAN JENA
RESIDING AT: VYAS 6/103
SBI COLONY, KESURA
BHUBANESWAR
ODISHA 751002

(WRONGLY MENTIONED IN THE
FIR AS NO. L3 103 VYAS
SBI COLONY
KESURA SHAHEED
NAGARA POLICE STATION
KHUDRA, ORISSA - 751006)

Digitally signed by
NAGAVENI

Location: HIGH
COURT OF
KARNATAKA

2. MANORANJAN JENA
AGED ABOUT 61 YEARS
S/O TRILOCHAN JENA
RESIDING AT: VYAS 6/103
SBI COLONY, KESURA
BHUBANESHWAR,
ODISHA 751002
(WRONGLY MENTIONED IN THE FIR AS
L3 103 VYAS, SBI COLONY
KESURA, KHUDRA, ORISSA)

3. SONI SINHA
AGED ABOUT 35 YEARS
D/O ARUN SINHA
RESIDING AT: NO.B1004
PURVA FOUNTAIN SQUARE
MARATHAHALLI
BENGALURU - 560 037.

...PETITIONERS

(BY SRI SHRISHAIL SHIVABASAPPA NAVALGUND, ADVOCATE
FOR P-1 AND P-3;
SMT.SRILAKSHMI K.R., ADVOCATE FOR P-2)

AND:

STATE OF KARNATAKA (BY HAL PS)
REPRSENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI THEJESH P., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C., PRAYING TO 1. QUASH THE ENTIRE PROCEEDINGS
IN C.C.NO.50311/2022 (ANNEXURE-A) ON THE FILE OF THE
LEARNED XXIX A.C.M.M MAYO HALL BENGALURU AGAINST THE
PETITIONER NOS.1 AND 2; 2. QUASH THE CHARGE SHEET
DATED 05.01.2022 (ANNEXRUE-B) FILED IN CR.NO.219/2021
AND CONSEQUENTLY FURTHER PROCEEDINGS IN
C.C.NO.50311/2022 ON THE FILE OF THE LEARNED XXIX
A.C.M.M MAYO HALL BENGALURU AGAINST THE PETITIONER
NOS.1 AND 2.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.50311/2022 registered for offences punishable under Sections 498A, 506 of the IPC r/w Sections 3 & 4 of the Dowry Prohibition Act, 1961, pending before the XXIX Additional Chief Metropolitan Magistrate, Mayo Hall, Bengaluru, arising out of Crime No.219/2021.

2. Heard Sri Shrishail Shivabasappa Navalgund, learned counsel appearing for petitioners 1 and 3, Smt Srilakshmi K R, learned counsel appearing for petitioner No.2 and Sri Thejesh P, learned High Court Government Pleader appearing for the respondent.

3. Learned counsel appearing for the petitioners would submit that the parties to the lis have arrived at a settlement before the family Court in M.C.No.5048/2021 and a copy of memorandum of settlement filed under Section 89 of the CPC read with Rules 24 and 25 of the Karnataka Civil Procedure NC: 2024:KHC:31802 (Mediation) Rules, 2005 is filed before this Court. The learned counsel for the petitioners submits that the conditions stipulated in the settlement are fulfilled. The relevant paragraphs of memorandum of settlement read as follows:

"....

5. Both the parties have agreed to withdraw all allegations inter-se and cases against each other and their families, including specifically- i. C.C.50311/2022 pending on the file of the Hon'ble XXIX Additional Chief Metropolitan Magistrate, Mayohall, Bangalore arising from Crime No.219/2021 filed by the petitioner with HAL Police Station u/s. 498-A & 506 of the Indian Penal Code 1860 r/w Sections 3 & 4 Dowry Prohibition Act, 1961 against the Respondent and his father Mr.Manoranjan Jena;

ii. Crl.Misc.No.121/2022 filed by the petitioner u/s.12 of the Protection of Women Against Domestic Violence Act, 2005 against the Respondent, pending on the file of the Hon'ble Metropolitan Magistrate Traffic Court - I, Mayohall, Bangalore."

4. In terms of the memorandum of settlement arrived at between the parties, which also recognizes closure of the present proceedings and also in view of the fact that the offence alleged is under Section 498A of the IPC, I deem it appropriate to terminate the proceedings against the petitioner, as the same is not against the State.

NC: 2024:KHC:31802

5. For the aforesaid reasons, I pass the following:

ORDER

(i) The Criminal Petition is allowed.

(ii) The impugned proceedings in C.C.No.50311/2022 pending on the file of the XXIX ACMM Court, Bengaluru, stand quashed.

Consequently, I.A.No.1 of 2024 stands disposed.

Sd/-

(M.NAGAPRASANNA) JUDGE BKP

Mr Babu Rao vs State Of Karnataka on 19 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 9587 OF 2021
C/W
CRIMINAL PETITION NO. 5517 OF 2022,
CRIMINAL PETITION NO. 10761 OF 2022

IN CRL.P.NO.9587/2021

BETWEEN:

- Digitally signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA
1. P. VENKATA RAO,
S/O B. APPALA NAIDU,
AGED 68 YEARS,
 2. RAJESH POLLAROWTHU,
S/O P. VENKATA RAO,
AGED 38 YEARS,
(REP BY HIS GPA HOLDER
PETITIONER NO.1),
 3. SMT. UMA PARVATHY,
W/O P. VENKATA RAO,
AGED 61 YEARS,
 4. SMT. VANDANA,
W/O RAAM KUMAR,
AGED ABOUT 39 YEARS,
PETITIONER NO.1 TO 4 ARE
R/AT NO 150, 2ND CROSS,

OM RESIDENCY LAYOUT,

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

BEHIND TAR FACTORY,
KODIGEHALLI MAIN ROAD,
BENGALURU - 36.

...PETITIONERS

(BY SRI. S.N. BHAT., ADVOCATE)

AND:

1. STATE BY EAST ZONE WOMEN POLICE,
BENGALURU - 560 001.
REPRESENTED BY S.P.P.,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SMT. S. GAYATHRI,
W/O RAJESH POLLAROWTHU,
AGED ABOUT 28 YEARS,
R/AT NO.178, 4TH CROSS,
MUNIYAPPA LAYOUT,
K.R.PURAM,
BENGALURU - 560 036.

AND ALSO R/AT NO.107/F,
B.B.ROAD, PERAMBUR,
CHENNAI,
TAMILNADU - 600 039.

...RESPONDENTS

(BY SMT.WAHEED, HCGP FOR R1;
SRI.B.V.MANJUNATHA, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.29688/2021 ON
THE FILE OF VI ADDL.C.M.M., BENGALURU FOR THE OFFENCE
P/U/S 498(A), 323, 504 R/W 34 OF IPC AND SECTION 3 AND 4

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

OF DOWRY PROHIBITION ACT, CHARGE SHEET FILED BY THE
1ST RESPONDENT POLICE.

IN CRL.P.NO.5517/2022

BETWEEN:

1. MR.BABU RAO,
SON OF NAGAMIAH,
AGED ABOUT 65 YEARS,
2. MRS.GAYATHRI,
DAUGHTER OF MR.BABU RAO,
AGED ABOUT 28 YEARS,
BOTH ARE RESIDING AT
NO.107/F, FIRST FLOOR,
B.B.ROAD, PERAMBUR,
CHENNAI - 600 011.
3. SHRI.M.PURUSHOTHAMAN,
SON OF SATHYA RAO,
AGED ABOUT 46 YEARS,
NO.32/301, H.P.NAGAR,
EAST COLONY, VASHINAKA,
CHEMBUR,
MUMBAI - 400 074.

...PETITIONERS

(BY SRI. BHARATHRAJ J., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY
K.R.PURAM POLICE STATION,
BENGALURU - 560 036.

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

2. SHRI. VENKATA RAO, MALE,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD, K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1;
SMT.KATHYAYINI DEVI, ADVOCATE FOR
SRI.V.LAKSHMI KANTH RAO, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE FIR REGISTERED BEFORE K.R.PURAM P.S., AT

BENGALURU IN CR.NO.401/2020 AND ALL FURTHER
PROCEEDINGS AS AGAINST THE PETITIONERS IN
C.C.NO.51278/2022 ON THE FILE OF THE HON'BLE X A.C.M.M.,
BENGALURU FOR THE OFFENCE P/U/S 341, 323, 506 READ
WITH 34 OF IPC INITIATED BY THE RESPONDENT THROUGH
THE COMPLAINT/P.C.R NO.51156/2020.

IN CRL.P.NO.10761/2022

BETWEEN:

MRS.DURGA,
W/O BABU RAO,
AGED ABOUT 63 YEARS,
RESIDING AT NO.107/F BB ROAD,
PERAMBUR,
CHENNAI - 600 039.

...PETITIONER

(BY SRI. BHARATHRAJ J., ADVOCATE)

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

AND:

1. THE STATE OF KARNATAKA,
BY K.R.PURAM POLICE STATION,
BENGALURU,
KARNATAKA - 560 036.

2. SHRI. VENKAT RAO POLAROWTHU,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD,
K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE COMPLAINT DATED 06.02.2020 IN PCR
NO.51156/2020 BEFORE THE X A.C.M.M., BENGALURU
(ANNEXURE - A) AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE N S SANJAY GOWDA

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

ORAL ORDER

Criminal Petition No. 9587/2021 arises out of the complaint lodged by the wife against her husband and her in-laws. Crl.P.Nos.10761/2022 and 5517/2022 arise out of the criminal compliant lodged by the father-in-law and the mother-in-law against the wife-Smt. Gayathiri w/o Rajesh Polatowthu and her relatives.

2. Today, a joint compromise memo is filed in all the three petitions, the terms of which, read as follows:

"Both the petitioner and respondent file this joint compromise memo as follows:

During the mediation in the Presence of the Honourable Judge of the Metropolitan Magistrate, Additional Mahila Court dated 06.07.2024, at Chennai, the petitioner No 2 herein in Criminal petition No: 5517/2022 and the petitioner no 2 herein in CRL.P 9587/2021 agreed to settle the issues amicably on the following terms:-

1) The petitioner MRS GAYATHRI and the respondent MR. RAJESH POLAROWTHU felt that their marriage had irretrievably broken down due to NC: 2024:KHC:28217 their difference of opinion and incompatibility.

Therefore, they have decided to settle the issues amicably by filing this Joint Compromise Memo.

2) The respondent paid part payment of Rs.5,00,000/- (Rupees Five lakhs) to the petitioner Gayathri by way of D.D. No. 000995 Dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore and the same is received by the petitioner Gayathri and the respondent Rajesh .P has agreed to pay the balance amount of Rs.13,00,000/- (Rupees thirteen Lakhs) at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

3) The Respondent/petitioners have no objection to quash the following cases filed by each other and also against their family members.

b. The 2nd respondent Venkat Rao has no objection to allow the CRL.Ptn No: 5517/2022 and 10761/2022 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed

by Gayathri and others and Durga for quashing the CC No: 51278/2022 charged for offences U/s 341, 323, 506 IPC pending on the file of the Additional Chief Judicial Magistrate, Mayo Hall, Bangalore City.

NC: 2024:KHC:28217 b. The 2nd respondent Gayathri has no objection to allow the CRL.Ptn. No: 9587/2021 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed by Venkat Rao for quashing the CC No: 29688/2021 charged for offences U/s 498(A),323,504 and 34 IPC read with section 3 and 4 of DV Act pending on the file of the Additional Chief Metropolitan Magistrate, Mayo Hall, Bangalore City.

C. The petitioner/Rajesh filed a Dissolution of Divorce Petition in MC No: 735/2020 U/s 13(1) (i-a) that was initially filed in the Court of Honourable Principal Family Judge at Bangalore and the same that has been transferred to the Honourable Family Court at Chennai as O.P. No. 1655/2023 which is already closed as per the compromise memo.

d. Both parties have withdrawn the Conjugal Rights Petition in H.M.O.P.No.3067/2020 U/s Section 9 of the Hindu Marriage Act in Honourable 1st Additional Family Court at Chennai which is already closed as per the compromise memo.

e. Both parties have withdrawn Maintenance petition U/s 125 in M.C.No.108/2022 in Honourable 1st NC: 2024:KHC:28217 Additional Family Court at Chennai which is already closed as per the compromise memo.

g. Domestic Violence Petition in DVC.No.18/2022 at Metropolitan Magistrate, Additional Mahila Court at Egmore, Chennai which is already closed as per the compromise memo.

4) It is further agreed that the Respondent will return the Sridhana articles consisting of one set of gold Bangles, two gold rings, one gold necklace, one gold chain, and one silver pot to Petitioner and the Petitioner will return one Mangalyam Chain, one Mangalasutra, one gold ring and one pair of silver anklet to the respondent at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

5) Further, the Petitioner will close the joint locker account 00000036224683995 in State Bank of India, KR Puram Branch, Bangalore after withdrawing all the cases by the parties and closing any account in the name of the petitioner located at Bangalore.

6) Both the petitioner and respondent undertake, not to file any enquiries pertaining the personal information, complaint against each other before the

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NC: 2024:KHC:28217 police authorities or court of law or before any all- India Government forum between each other and their family members and should not disturb the each other's future marital life.

(7) The Petitioner waive her right to claim any past, present or future maintenance from the Respondent's title interest, possession, inheritance, succession or claim over the movable and immovable properties for which the Petitioner has also agreed. The same was acknowledged by the Respondent.

8) The Respondent waive his right to claim any past, present or future maintenance, from the Petitioner's title interest, possession, inheritance, succession or claim over the movable and immovable properties of the Petitioner and the same was agreed by the Respondent.

9) Both the parties do not have any grievance against each other and their family members and they have duly and peacefully settled the same to their entire satisfaction.

10) Whereas the parties hereto do not have any grievance left against each other including their family members, therefore, in view of the same,

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NC: 2024:KHC:28217 they have further undertaken that they shall not level any legations against each other or each other's parents or each other's family members cause to act in a manner so as to harm the each other family's on basis of the caste, social class, reputation and image of the other, in the family or the society at large.

11) The parties have mutually agreed that after the Petitioner receives Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) and an additional of Rs 2,00,000/- (Rupees Two Lakhs Only) towards the missing Gold ornaments as agreed by both parties totalling Rs. 18,00,000.00/- (Rupees Eighteen Lakhs only) as Permanent alimony, both petitioner and respondent or their family members shall not have any claim left against the other Party or their family members of any kind whatsoever and they will not claim any type of maintenance, alimony etc., as it is a full and final Alimony which covers all the claims of the respective parties.

12) It is further agreed between the parties that in case of breach/violation or wilful/deliberate disobedience of either the settlement deals or its terms and conditions, the party breaching the terms, shall be liable for contempt proceeding and

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NC: 2024:KHC:28217 the party aggrieved shall be entitled for status quo- anti in every possible way.

13) Respondent and Petitioner also agreed along with m. family members and known people that they will not initiate or pursue any legal case, complaint, claim, inquiry pertaining the personal information, or any appeal against each other and their family members via known or unknown source.

14) That the above said settlement and its terms and conditions have been entered and executed between the parties with their free consent and the consent of their respective family members with their will and without any force, undue pressure, influence, misrepresentation or mistake (both law and fact) in any form, and statement, agreement has been correctly recorded the said agreed terms are without any inducement or coercion from any corner whatsoever.

15) For the reasons stated above in this joint compromise memo it is respectfully prayed that this Hon'ble Court be pleased to record this joint compromise memo in the above in CRL.Pet. 5517/2022, CRL.P 10761/2022 and CRL. Pet. 9587/2021 and On the file of this Hon'ble High Court of Karnataka and consequently order quashing

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NC: 2024:KHC:28217 of the CC No: 29688/2021 on the file of Additional Chief Metropolitan Magistrate, Bangalore City and CC No: 51278/2022 on the file of the Additional Chief Metropolitan, Mayo hall, Bangalore City, as settled and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case in the interest of justice and equity."

3. The husband and wife are present before the Court and the wife admits the execution of compromise petition and also submits that she has received a sum of Rs.5,00,000/- by way of D.D.No.000995 dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore from her husband and agrees to receive the balance amount of Rs. 13,00,000/- as indicated in the joint compromise memo.

4. In view of the fact that the dispute is essentially, between the two families which arose out of a marital dispute, it would be appropriate to accept the compromise memo and quash both the proceedings in

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NC: 2024:KHC:28217 C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore.

Accordingly, proceedings in C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore are quashed.

Consequently, the Criminal petitions are allowed.

Sd/-

(N S SANJAY GOWDA) JUDGE JS CT:SN

Mr. Manoj V vs Mrs Nandana K on 16 July, 2024

-1-

NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2024

BEFORE
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 14568 OF 2024 (GM-FC)
C/W
WRIT PETITION NO. 10177 OF 2024 (GM-FC)

IN W.P.No.14568/2024

BETWEEN:

MR. MANOJ V,
S/O VENKATA REDDY C.R.,
AGED ABOUT 33 YEARS,
RESIDING AT NO.46/D,
1ST FLOOR, 8TH CROSS,
6TH MAIN, KENGERI SATELLITE TOWN,
BENGALURU - 560 060.

Digitally ...PETITIONER
signed by (BY SRI. RAJESH P., ADVOCATE)
SUVARNA T

Location: AND:

HIGH
COURT OF
KARNATAKA MRS. NANDANA K,
D/O KRISHNA REDDY,
AGED ABOUT 29 YEARS,
RESIDING AT NO.4, 8TH CROSS,
NEAR MATHRUSHREE SCHOOL,
CHAMUNDESHWARI NAGAR,
LAGGARE, BENGALURU - 560 058.

... RESPONDENT

(BY SRI.K.P.BHUVAN, ADVOCATE)

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NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ALLOW THE INSTANT PETITION AND SET ASIDE THE INTERIM ORDER DATED 04.03.2024 IN INTERIM APPLICATION NO.3 PASSED BY THE HONOURABLE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT AT BENGALURU IN MC NO.6198 OF 2022 VIDE ANNEX-A IN ACCORDANCE WITH LAW AND ETC.,

IN W.P.No.10177/2024

BETWEEN:

SMT. NANDANA K,
W/O MANOJ V.,
D/O KRISHNA REDDY,
AGED ABOUT 28 YEARS,
RESIDING AT NO.4, 8TH CROSS,
NEAR MATHRUSHREE SCHOOL,
CHAMUNDESHWARI NAGAR,
LAGGARE, BENGALURU - 560 058.

...PETITIONER

(BY SRI. K.P.BHUVAN., ADVOCATE)

AND:

SRI. MANOJ V,
S/O VENKATA REDDY C.R.,
AGED ABOUT 31 YEARS,
RESIDING AT NO.46/D,
1ST FLOOR, 8TH CROSS,
6TH MAIN, KENGERI SATELLITE TOWN,
BENGALURU - 560 060.

...RESPONDENT

(BY SRI. RAJESH PANDIAN, ADVOCATE FOR C/R)

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NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 04.03.2024 PASSED BY THE II ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU IN MC NO.6198/2022 ON IA NO.3 VIDE ANNEXURE - K BY ALLOWING THE APPLICATION OF THE PETITIONER VIDE ANNEXURE - F.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,

THE COURT MADE THE FOLLOWING:

COMMON ORDER

Aggrieved by the order dated 04.03.2024 passed on IA No.3 in M.C.No.6198/2022, whereby the Court below had granted interim maintenance of Rs.8,000/- per month, both the husband and the wife are before this Court.

2. The writ petition filed by the husband is numbered as W.P.No.14568/2024 and the writ petition filed by the wife is numbered as W.P.No.10177/2024. As such, both these writ petitions are taken up together for disposal by way of common order.

3. The parties are referred to as husband and wife for the sake of convenience.

NC: 2024:KHC:27828

4. The wife has filed an application seeking interim maintenance of Rs.1,25,000/- per month, litigation expenses of Rs.25,000/- and Rs.3,00,000/- towards medical expenses by the husband. It is the case of the wife that the marriage was solemnized on 12.05.2022. As the husband deserted her, she filed a petition for restitution of conjugal right and the husband by way of a counter claim, had sought for divorce. The wife on 23.09.2023 has filed an application i.e., IA No.3 seeking maintenance.

5. It is the case of the husband that she is not entitled for maintenance as she is gainfully employed and she has filed false statement of assets and liabilities. It is stated that she has voluntarily left the matrimonial house. She is not suffering from any diseases. She has not produced any materials to show that she has spent Rs.3,00,000/- for medical treatment. She was admitted to hospital as she was attempted to commit suicide.

6. Having heard the learned counsel for the parties and taking into consideration the documents that are placed before it, the Court below has observed that the affidavit of NC: 2024:KHC:27828 assets and liabilities filed by the wife discloses that she is a B.E. Graduate, working as SAP Consultant at Capgemini Technology Services and earning net salary of Rs.58,272/-. She had borrowed an amount of Rs.6,25,000/- from HDFC bank and Rs.6,60,000/- from Yeshwanthpur Co-operative Society and she has to pay the EMI.

7. The affidavit of assets and liabilities filed by the respondent discloses that he has to maintain his parents and his salary is Rs.2,27,321/- per month and has borrowed construction loan from SBI as well as Solar Panels loan from private finance. He has been paying EMI of Rs.1,70,300/- towards housing loan and Rs.45,041/- towards Solar Panel loan. The Court also observed that the wife has sought for medical expenditure of Rs.3,00,000/- from the respondent and it is her burden to prove that she has spent that amount towards medical expenses and the Court has felt that at this stage, it is not proper to direct the respondent to pay the alleged medical expenses. Accordingly, the Court held that as the income of the husband is more than the earnings of the wife, it is the duty of the husband to provide maintenance to his legally wedded wife in accordance with his financial status NC: 2024:KHC:27828 and thereby, granted Rs.8,000/- per month to the wife as maintenance and

litigation expenses of Rs.10,000/- . Questioning the quantum of maintenance and seeking enhancement of the maintenance, both the husband and the wife are before this Court.

8. Learned counsel appearing for the husband has pointed out that the party who has come before the Court with suppression and misrepresentation of fact is not entitled for any relief from the Court. He submits that though the application seeking maintenance is filed on 23.09.2023, the bank statements of the wife are filed only from April 2021 till February 2023. She has failed to submit the bank statements from February 2023 to 23.09.2023. He further submits that for performing their marriage, she said to have borrowed loan of Rs.58,272/-, but no documents were placed before the Court. It is submitted that as of now, her salary is Rs.78,000/- per month and the said fact was not stated even before this Court when the present writ petition was filed in the year 2024. He submits that in the statement of assets and liabilities, it is stated that her liability is Rs.1,25,000/- per month, whereas in the writ petition filed by her, in the pleadings at para No.21, it NC: 2024:KHC:27828 is stated that the liability is Rs.67,000/- per month. Even this statement also runs contrary. Further, at the time of filing the petition, she has stated that she is earning an amount of Rs.58,272/- per month. Now the salary would be hiked and she is presently drawing salary of Rs.78,000/- per month. It is submitted that she has also in her expenditure had shown Rs.25,000/- to be spent to her parents. It is submitted that the husband need not provide maintenance to her parents. It is further submitted that the marriage had taken place on 12.05.2022 and she stayed with her husband till 07.08.2022 and later, she left the matrimonial house. He submits that when she is capable of earning which is evident from the documents produced by her, she is not entitled for any maintenance.

9. Learned counsel has placed reliance on the judgment of the Delhi High Court, arising out of MAT.APP.(F.C.)248/2019 and CM Appl.20720/2022, wherein the Court has observed that the appellant is highly qualified and has an earning capacity, but in fact, though she has been earning, she is not inclined to truthfully disclose her true income. Such a person cannot be held entitled to maintenance.

NC: 2024:KHC:27828 Accordingly, the claim for maintenance by the appellant therein under the provisions of Protection of Women against Domestic Violence Act has been declined. Accordingly, the said appeal came to be dismissed. Basing on that, learned counsel appearing for the husband submits that the petition is liable to be dismissed and the wife is not entitled for any maintenance.

10. Learned counsel for the wife submits that the husband has also suppressed his income. Now he is earning Rs.2,97,000/- per month and that aspect was not disclosed before this Court. The solar loan has been cleared, but the same has been mentioned in this petition as due. It is submitted that the husband has come before this Court with suppression of facts. Considering the fact that she has to pay the EMI and other loans, the wife is entitled for the amount claimed by her. But the Court below without any basis, had granted an amount of Rs.8,000/- as monthly maintenance, which needs to be enhanced.

11. Having heard the learned counsel appearing for the parties and also perused the materials on record.

NC: 2024:KHC:27828

12. The parties who are claiming the relief before the Court should approach the Court with clean hands and any suppression from any of them, will have its consequences. The Hon'ble Apex Court in Rajnesh Vs. Neha & Another¹ has dealt with this aspect. When the parties have filed statement of assets and liabilities and if any of the statements that are filed before the Court are proved to be false, then, the Court can initiate appropriate proceedings against the parties.

13. From the pleadings that are placed before the Court prima-facie it appears that, there is suppression of facts from both the parties. In that view of the matter, the impugned order dated 04.03.2024 passed on IA No.3 in MC No.6198/2022 by the learned II Additional Principal Judge, Family Court at Bengaluru, is set aside and the family Court below shall consider all these contentions raised on behalf of both the parties. The wife shall also file her statement of accounts right from the date of the petition till this date, including the IT returns as contemplated as per the judgment of the Hon'ble Apex Court in Rajnesh's case and based on that, the Court below shall pass appropriate order, and if any AIR 2021 SC 569

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NC: 2024:KHC:27828 suppression on behalf of either of the parties, then, the Court shall initiate appropriate action.

Registry is directed to send the entire record to the Court below to enable the Court to re-appreciate the matter in a better way. The application IA No.3 shall be disposed of within two months from the date of receipt of copy of this order.

Accordingly, writ petitions stand disposed off. All IA's, in the writ petitions stand disposed off.

SD/-

JUDGE PN

Mrs B M Rohini vs Sri B S Mukund on 24 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:28930
CRL.P No. 5527 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 5527 OF 2024

BETWEEN:

1. MRS. B.M. ROHINI
W/O SRI. B.S. MUKUND,
AGED ABOUT 40 YEARS,
R/AT NO.4162,
TOWER 4,
PHOENIX ONE BANGALORE WEST APARTMENTS,
DR RAJKUMAR ROAD,
BENGALURU-560010

...PETITIONER

(BY SRI. SIDDHARTH SUMAN, ADVOCATE)

AND:

1. SRI. B.S. MUKUND
S/O. B.S. SRINIVAS,
AGED ABOUT 42 YEARS,
R/AT NO.53, 16TH CROSS,
10TH MAIN, NEAR MES COLLEGE,
MALLESHWARA, MALLIKARJUNA,
BENGALURU-560055

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

...RESPONDENT

(BY SRI. GAGAN GANAPATHY M.B., ADVOCATE)

THIS CRL.P. IS FILED U/S 482 OF THE CR.P.C. PRAYING
TO SET ASIDE THE ORDER DATED 06.05.2024 PASSED BY THE

HONBLE III METROPOLITAN MAGISTRATE TRAFFIC COURT, AT
BENGALURU I.E., ANNEXURE-A AND CONSEQUENTLY ALLOW
THE INTERIM APPLICATIONS NO.1 TO 4 FILED BY THE
PETITIONER I.E., I.A.NO.1 - APPLICATION U/S 23 R/W
19(1)(A) AND (D), I.A.NO.2 - U/S 23 R/W 20(1)(B) AND (D),
I.A.NO.3 - U/S 23 R/W 19(1)(a) AND (2), I.A.NO.4 - U/S
19(1)(f) OF THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

(PER: HON'BLE MR JUSTICE M.NAGAPRASANNA) The petitioner is before this Court, seeking the following prayer:

"WHEREFORE, the Petitioner above named, humbly prays that this Hon'ble Court be pleased to set aside the order dated 06.05.2024 passed by the Hon'ble III Metropolitan Magistrate Traffic Court, At Bengaluru i.e. Annexure-A, and consequently allow the interim applications No 1 to 4 filed by the Petitioner i.e I.A.No.1-Application U/s 23 R/w 19 (1)(A) and (D), I.A.No.2 - U/s 23 R/w 20 (1)(B) and (D), I.A.No.3- U/s 23 R/w 19 (1)(a) and (2), I.A.No.4- U/s 19(1) (f) of the Protection of Women from Domestic Violence Act, 2005 in the interests of justice and equity."

NC: 2024:KHC:28930

2. Heard Sri. Siddharth Suman, learned counsel appearing for the petitioner, Sri. Gagan Ganapathy M.B., learned counsel appearing for the respondent and have perused the material on record.
3. Learned counsel appearing for the petitioner-wife contends that all the applications were rejected by an order which does not contain any reasons. Therefore, this Court should entertain this petition.
4. The other submission that is made is that the wife is not getting any maintenance from the hands of the husband despite his undertaking that he would pay Rs.60,000/- . The undertaking is not recorded by the concerned Court, but the order sheet does make a mention of the said undertaking.

Therefore, he seeks a direction that till any order is passed by the Court of Session, the husband should be directed to pay Rs.60,000/-.

5. Learned counsel appearing for the respondent-

husband would dispute the submission and contend that the NC: 2024:KHC:28930 husband is taking care of the children who are 15 and 17 years as on today. Be those submissions as they are.

6. This Court in Crl.P.No.3578/2022 in the case of A.RAMESH BABU vs. DHARANI S., disposed on 28.06.2024 has held as follows:

"10. A Full Bench of the High Court of Bombay, in the case of NANDKISHOR PRALHAD VYAWAHARE v. MANGALA¹ in which the issue was whether the High Court can exercise the power under Section 482 of the Cr.P.C. in respect of proceedings under the Act, answers it after considering the entire spectrum of the Act and the precedents then obtaining as follows:

".....

42. We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Criminal Procedure Code to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under section 482 of Criminal Procedure Code is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Criminal Procedure Code by the Parliament as provided under section 28 of the D.V. Act? In other words - Would the nature of the proceedings decide the fate of section 28 or the intention of the Parliament as expressed in section 28 of the D.V. Act would? To find out an answer, as a first step, we must look into the express language of the provision of section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

50. Coming to the second part of section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of the provisions of Criminal Procedure Code. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Criminal Procedure Code to all the proceedings under the D.V. Act, as laid down in section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under section 28(2) exists for speedy and effective disposal of an application under section 12 or under sub- section (2) of section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub-section (2) of section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under section 12 or section 23(2) and comes to an end the moment the proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so as to exclude the applicability of the provisions of Criminal Procedure Code, forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, NC: 2024:KHC:28930 remedy of criminal revision under section 397 or invocation of High Court's inherent power under section 482 of Criminal Procedure Code, we would be doing violence to the language of entire provision of section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51. The purpose of the power given to the Court under section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with section 12 D.V. Act application in a given case and especially the Courts contemplated under section 26 of the D.V. Act before whom similar applications are filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

52. If the concept of limited applicability of the provisions of the Criminal Procedure Code, as propounded by Shri C.A. Joshi, learned Counsel for the respondent is

accepted; in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise its own procedure NC: 2024:KHC:28930 in a particular case so as to suit the exigencies of that case. We may add here that language used in section 28(2) is significant and needs to be taken into account. The freedom to lay down "own procedure" is confined to only a particular proceeding either under section 12 or section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words "for disposal of an application under section 12, sub-section (2) of section 23" after the words "nothing in sub-section (1) shall prevent the Court from laying down its own procedure".

53. This would mean that generally the provisions of Criminal Procedure Code would be applicable, to all proceedings taken under sections 12 to 23 and also in respect of the offence under section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Criminal Procedure Code to the proceedings referred to in section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the section, which would have its last word. We have already held that section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under section 482 of Criminal Procedure Code, subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and also in respect of the offence under section 31 of the D.V. Act.

54. We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (*supra*), wherein it is observed that a proposition that NC: 2024:KHC:28930 because the proceedings are of civil nature, the Criminal Procedure Code may not apply, is too general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Criminal Procedure Code to the proceedings under the Act (Paragraph 16). It also held that the remedy under section 482 of Criminal Procedure Code would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under:

"19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under section 29 before the Court of Session or revision under section 397, the Court may decline entertainment of the petition under section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under section 482 of the Code."

55. At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunapareddy (supra) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are predominantly of civil nature, the proceedings were to be governed by Criminal Procedure Code as provided under section 28 of the D.V. Act. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under section 18 and monetary relief under section 20 would be governed by the provisions of Criminal Procedure Code in terms of section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding.

NC: 2024:KHC:28930 If these observations apply to a proceeding taken for obtaining reliefs under sections 18 and 20 of the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56. In the case of Sukumar Gandhi (supra), the Division Bench of this Court, however, held that because the proceedings under section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to section 482 of Criminal Procedure Code could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under section 482 of Criminal Procedure Code could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite to what has been thought of by it. That apart, making section 482 of Criminal Procedure Code as not applicable may also amount to doing harm to plain and clear language of section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

57. While there is no difference of opinion about what the intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of section 482 to the proceedings under section

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NC: 2024:KHC:28930 12(1) of the D.V. Act and it is achieved by removing its applicability. The issue can be examined from a different angle as well.

58. A plain reading of section 482 of Criminal Procedure Code, which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person- woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under section 12 of the D.V. Act. If this power is removed from section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

59. Now, one incidental question would arise as to from what stage the provisions of the Criminal Procedure Code would become applicable and in our view, the answer could be found out from the provisions of sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under section 28 of the

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NC: 2024:KHC:28930 D.V. Act, subject to the exceptions provided in the Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of section 28, the provisions of the Criminal Procedure Code shall govern the proceedings under sections 12 to 23 and also those relating to an offence under section 31 of the D.V. Act on their commencement."

(Emphasis supplied) The Full Bench considers at what point in time or at what stage the Cr.P.C. would become applicable and holds that it is only where an order is passed.

Xxxxxx xxxxx xxxx SUMMARY OF THE FINDINGS:

(i) A petition under Section 482 of the Cr.P.C. calling in question the entire proceedings before the concerned Court initiated under the Protection of Women from Domestic Violence Act, 2005 would be maintainable, only if the proceedings are challenged on the ground of abuse of the process of the law, as the Court of Session is not empowered to obliterate the proceedings holding it to be an abuse

of the process of the law.

(ii) Any specific order passed by the concerned Court answering applications filed under Sections 18, 19, 20 or 22 of the Act or any other interlocutory order would not be entertainable before this Court in its jurisdiction under Section 482 of the Cr.P.C. The aggrieved, by any order, has to prefer an appeal under Section 29 of the Act, as it is an alternative and statutory remedy available.

(iii) Finding the entire process initiated by the respondent against the present petitioners, the father-in-law and mother-in-law, to be an abuse of the process of the law, those proceedings are to be obliterated."

(Emphasis supplied)

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NC: 2024:KHC:28930

7. This Court in the aforesaid judgment has held that the orders passed under Sections 12, 18, 19 20 or 22 under the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short) would not be maintainable before this Court in a proceeding under Section 482 of the Cr.P.C. and the parties will have to agitate their rights before the concerned Court on filing an appeal under Section 29 of the Act.

8. In that light, the subject petition will have to be preferred before the concerned Court invoking Section 29 of the Act.

9. If the petition is preferred within the next 15 days, the limitation would be protected in the light of the fact that these proceedings are pending before this Court and an order passed in the said criminal petition directing the petitions to be filed before the concerned Court.

10. All contentions included the once observed hereinabove, shall remain opened to be agitated in an appeal filed under Section 29 of the Act.

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NC: 2024:KHC:28930

11. The concerned Court shall conclude the proceedings under Section 29 of the Act within an outer limit of 6 weeks, if not earlier, so that the proceedings before the trial Court that would not be impeded in any way.

With the aforesaid observations, the petition stands disposed.

Sd/-

(M.NAGAPRASANNA) JUDGE SJK

Mrs Durga vs The State Of Karnataka on 19 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 9587 OF 2021
C/W
CRIMINAL PETITION NO. 5517 OF 2022,
CRIMINAL PETITION NO. 10761 OF 2022

IN CRL.P.NO.9587/2021

BETWEEN:

- Digitally signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA
1. P. VENKATA RAO,
S/O B. APPALA NAIDU,
AGED 68 YEARS,
 2. RAJESH POLLAROWTHU,
S/O P. VENKATA RAO,
AGED 38 YEARS,
(REP BY HIS GPA HOLDER
PETITIONER NO.1),
 3. SMT. UMA PARVATHY,
W/O P. VENKATA RAO,
AGED 61 YEARS,
 4. SMT. VANDANA,
W/O RAAM KUMAR,
AGED ABOUT 39 YEARS,
PETITIONER NO.1 TO 4 ARE
R/AT NO 150, 2ND CROSS,

OM RESIDENCY LAYOUT,

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

BEHIND TAR FACTORY,
KODIGEHALLI MAIN ROAD,
BENGALURU - 36.

...PETITIONERS

(BY SRI. S.N. BHAT., ADVOCATE)

AND:

1. STATE BY EAST ZONE WOMEN POLICE,
BENGALURU - 560 001.
REPRESENTED BY S.P.P.,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SMT. S. GAYATHRI,
W/O RAJESH POLLAROWTHU,
AGED ABOUT 28 YEARS,
R/AT NO.178, 4TH CROSS,
MUNIYAPPA LAYOUT,
K.R.PURAM,
BENGALURU - 560 036.

AND ALSO R/AT NO.107/F,
B.B.ROAD, PERAMBUR,
CHENNAI,
TAMILNADU - 600 039.

...RESPONDENTS

(BY SMT.WAHEED, HCGP FOR R1;
SRI.B.V.MANJUNATHA, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.29688/2021 ON
THE FILE OF VI ADDL.C.M.M., BENGALURU FOR THE OFFENCE
P/U/S 498(A), 323, 504 R/W 34 OF IPC AND SECTION 3 AND 4

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

OF DOWRY PROHIBITION ACT, CHARGE SHEET FILED BY THE
1ST RESPONDENT POLICE.

IN CRL.P.NO.5517/2022

BETWEEN:

1. MR.BABU RAO,
SON OF NAGAMIAH,
AGED ABOUT 65 YEARS,
2. MRS.GAYATHRI,
DAUGHTER OF MR.BABU RAO,
AGED ABOUT 28 YEARS,
BOTH ARE RESIDING AT
NO.107/F, FIRST FLOOR,
B.B.ROAD, PERAMBUR,
CHENNAI - 600 011.
3. SHRI.M.PURUSHOTHAMAN,
SON OF SATHYA RAO,
AGED ABOUT 46 YEARS,
NO.32/301, H.P.NAGAR,
EAST COLONY, VASHINAKA,
CHEMBUR,
MUMBAI - 400 074.

...PETITIONERS

(BY SRI. BHARATHRAJ J., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY
K.R.PURAM POLICE STATION,
BENGALURU - 560 036.

-4-

NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

2. SHRI. VENKATA RAO, MALE,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD, K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1;
SMT.KATHYAYINI DEVI, ADVOCATE FOR
SRI.V.LAKSHMI KANTH RAO, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE FIR REGISTERED BEFORE K.R.PURAM P.S., AT

BENGALURU IN CR.NO.401/2020 AND ALL FURTHER
PROCEEDINGS AS AGAINST THE PETITIONERS IN
C.C.NO.51278/2022 ON THE FILE OF THE HON'BLE X A.C.M.M.,
BENGALURU FOR THE OFFENCE P/U/S 341, 323, 506 READ
WITH 34 OF IPC INITIATED BY THE RESPONDENT THROUGH
THE COMPLAINT/P.C.R NO.51156/2020.

IN CRL.P.NO.10761/2022

BETWEEN:

MRS.DURGA,
W/O BABU RAO,
AGED ABOUT 63 YEARS,
RESIDING AT NO.107/F BB ROAD,
PERAMBUR,
CHENNAI - 600 039.

...PETITIONER

(BY SRI. BHARATHRAJ J., ADVOCATE)

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NC: 2024:KHC:28217

CRL.P No. 9587 of 2021

C/W CRL.P No. 5517 of 2022

CRL.P No. 10761 of 2022

AND:

1. THE STATE OF KARNATAKA,
BY K.R.PURAM POLICE STATION,
BENGALURU,
KARNATAKA - 560 036.

2. SHRI. VENKAT RAO POLAROWTHU,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD,
K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE COMPLAINT DATED 06.02.2020 IN PCR
NO.51156/2020 BEFORE THE X A.C.M.M., BENGALURU
(ANNEXURE - A) AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE N S SANJAY GOWDA

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

ORAL ORDER

Criminal Petition No. 9587/2021 arises out of the complaint lodged by the wife against her husband and her in-laws. Crl.P.Nos.10761/2022 and 5517/2022 arise out of the criminal compliant lodged by the father-in-law and the mother-in-law against the wife-Smt. Gayathiri w/o Rajesh Polatowthu and her relatives.

2. Today, a joint compromise memo is filed in all the three petitions, the terms of which, read as follows:

"Both the petitioner and respondent file this joint compromise memo as follows:

During the mediation in the Presence of the Honourable Judge of the Metropolitan Magistrate, Additional Mahila Court dated 06.07.2024, at Chennai, the petitioner No 2 herein in Criminal petition No: 5517/2022 and the petitioner no 2 herein in CRL.P 9587/2021 agreed to settle the issues amicably on the following terms:-

1) The petitioner MRS GAYATHRI and the respondent MR. RAJESH POLAROWTHU felt that their marriage had irretrievably broken down due to NC: 2024:KHC:28217 their difference of opinion and incompatibility.

Therefore, they have decided to settle the issues amicably by filing this Joint Compromise Memo.

2) The respondent paid part payment of Rs.5,00,000/- (Rupees Five lakhs) to the petitioner Gayathri by way of D.D. No. 000995 Dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore and the same is received by the petitioner Gayathri and the respondent Rajesh .P has agreed to pay the balance amount of Rs.13,00,000/- (Rupees thirteen Lakhs) at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

3) The Respondent/petitioners have no objection to quash the following cases filed by each other and also against their family members.

b. The 2nd respondent Venkat Rao has no objection to allow the CRL.Ptn No: 5517/2022 and 10761/2022 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed

by Gayathri and others and Durga for quashing the CC No: 51278/2022 charged for offences U/s 341, 323, 506 IPC pending on the file of the Additional Chief Judicial Magistrate, Mayo Hall, Bangalore City.

NC: 2024:KHC:28217 b. The 2nd respondent Gayathri has no objection to allow the CRL.Ptn. No: 9587/2021 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed by Venkat Rao for quashing the CC No: 29688/2021 charged for offences U/s 498(A),323,504 and 34 IPC read with section 3 and 4 of DV Act pending on the file of the Additional Chief Metropolitan Magistrate, Mayo Hall, Bangalore City.

C. The petitioner/Rajesh filed a Dissolution of Divorce Petition in MC No: 735/2020 U/s 13(1) (i-a) that was initially filed in the Court of Honourable Principal Family Judge at Bangalore and the same that has been transferred to the Honourable Family Court at Chennai as O.P. No. 1655/2023 which is already closed as per the compromise memo.

d. Both parties have withdrawn the Conjugal Rights Petition in H.M.O.P.No.3067/2020 U/s Section 9 of the Hindu Marriage Act in Honourable 1st Additional Family Court at Chennai which is already closed as per the compromise memo.

e. Both parties have withdrawn Maintenance petition U/s 125 in M.C.No.108/2022 in Honourable 1st NC: 2024:KHC:28217 Additional Family Court at Chennai which is already closed as per the compromise memo.

g. Domestic Violence Petition in DVC.No.18/2022 at Metropolitan Magistrate, Additional Mahila Court at Egmore, Chennai which is already closed as per the compromise memo.

4) It is further agreed that the Respondent will return the Sridhana articles consisting of one set of gold Bangles, two gold rings, one gold necklace, one gold chain, and one silver pot to Petitioner and the Petitioner will return one Mangalyam Chain, one Mangalasutra, one gold ring and one pair of silver anklet to the respondent at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

5) Further, the Petitioner will close the joint locker account 00000036224683995 in State Bank of India, KR Puram Branch, Bangalore after withdrawing all the cases by the parties and closing any account in the name of the petitioner located at Bangalore.

6) Both the petitioner and respondent undertake, not to file any enquiries pertaining the personal information, complaint against each other before the

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NC: 2024:KHC:28217 police authorities or court of law or before any all- India Government forum between each other and their family members and should not disturb the each other's future marital life.

(7) The Petitioner waive her right to claim any past, present or future maintenance from the Respondent's title interest, possession, inheritance, succession or claim over the movable and immovable properties for which the Petitioner has also agreed. The same was acknowledged by the Respondent.

8) The Respondent waive his right to claim any past, present or future maintenance, from the Petitioner's title interest, possession, inheritance, succession or claim over the movable and immovable properties of the Petitioner and the same was agreed by the Respondent.

9) Both the parties do not have any grievance against each other and their family members and they have duly and peacefully settled the same to their entire satisfaction.

10) Whereas the parties hereto do not have any grievance left against each other including their family members, therefore, in view of the same,

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NC: 2024:KHC:28217 they have further undertaken that they shall not level any legations against each other or each other's parents or each other's family members cause to act in a manner so as to harm the each other family's on basis of the caste, social class, reputation and image of the other, in the family or the society at large.

11) The parties have mutually agreed that after the Petitioner receives Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) and an additional of Rs 2,00,000/- (Rupees Two Lakhs Only) towards the missing Gold ornaments as agreed by both parties totalling Rs. 18,00,000.00/- (Rupees Eighteen Lakhs only) as Permanent alimony, both petitioner and respondent or their family members shall not have any claim left against the other Party or their family members of any kind whatsoever and they will not claim any type of maintenance, alimony etc., as it is a full and final Alimony which covers all the claims of the respective parties.

12) It is further agreed between the parties that in case of breach/violation or wilful/deliberate disobedience of either the settlement deals or its terms and conditions, the party breaching the terms, shall be liable for contempt proceeding and

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NC: 2024:KHC:28217 the party aggrieved shall be entitled for status quo- anti in every possible way.

13) Respondent and Petitioner also agreed along with m. family members and known people that they will not initiate or pursue any legal case, complaint, claim, inquiry pertaining the personal information, or any appeal against each other and their family members via known or unknown source.

14) That the above said settlement and its terms and conditions have been entered and executed between the parties with their free consent and the consent of their respective family members with their will and without any force, undue pressure, influence, misrepresentation or mistake (both law and fact) in any form, and statement, agreement has been correctly recorded the said agreed terms are without any inducement or coercion from any corner whatsoever.

15) For the reasons stated above in this joint compromise memo it is respectfully prayed that this Hon'ble Court be pleased to record this joint compromise memo in the above in CRL.Pet. 5517/2022, CRL.P 10761/2022 and CRL. Pet. 9587/2021 and On the file of this Hon'ble High Court of Karnataka and consequently order quashing

- 13 -

NC: 2024:KHC:28217 of the CC No: 29688/2021 on the file of Additional Chief Metropolitan Magistrate, Bangalore City and CC No: 51278/2022 on the file of the Additional Chief Metropolitan, Mayo hall, Bangalore City, as settled and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case in the interest of justice and equity."

3. The husband and wife are present before the Court and the wife admits the execution of compromise petition and also submits that she has received a sum of Rs.5,00,000/- by way of D.D.No.000995 dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore from her husband and agrees to receive the balance amount of Rs. 13,00,000/- as indicated in the joint compromise memo.

4. In view of the fact that the dispute is essentially, between the two families which arose out of a marital dispute, it would be appropriate to accept the compromise memo and quash both the proceedings in

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NC: 2024:KHC:28217 C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore.

Accordingly, proceedings in C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore are quashed.

Consequently, the Criminal petitions are allowed.

Sd/-

(N S SANJAY GOWDA) JUDGE JS CT:SN

Neelkanth vs Vijaylaxmi on 7 August, 2024

Author: K Natarajan

Bench: K Natarajan

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NC: 2024:KHC-K:5793

CRL.RP No. 200070 of 2022
C/W CRL.RP No. 200093 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL REVISION PETITION NO.200070 OF 2022
(397)
C/W
CRIMINAL REVISION PETITION NO.200093 OF 2023

IN CRL.RP NO.200070 OF 2022

BETWEEN:

VIJAYALAXIMI W/O NEELKANTH
AGE: 37 YEARS,
OCC: HOUSEHOLD,
R/O T. MARZAPUR,
TQ. AND DIST. BIDAR-585401.

...PETITIONER

Digitally signed by

KHAJAAMEEN L (BY SRI. MAHADEV S. PATIL, ADVOCATE)

MALAGHAN

Location: High AND:

Court Of

Karnataka

NEELKANTH S/O DEVRAO GOKHALE,
AGED 48 YEARS,
OCC: POLICE CONSTABLE WORKING IN
KSRP 6TH STATION P.C NO. 426
KALABURAGI IN SULTANPUR,
CAMP KARNATAKA
R/O AURAD-B DIST BIDAR-585401.

... RESPONDENT

(BY SRI. RAVI BHEEMSINGH CHAWAN, ADVOCATE)

-2-

NC: 2024:KHC-K:5793

CRL.RP No. 200070 of 2022

C/W CRL.RP No. 200093 of 2023

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 OF CR.P.C., PRAYING TO SET-ASIDE THE ORDER OF DATED 01.04.2022 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT BIDAR IN CRIMINAL APPEAL NO. 96/2019 WERE IN CONFIRMED THE ORDER DATED 06.11.2019 PASSED IN CRL. MISC.NO. 2202/2015 BY THE LEARNED I ADDL. CIVIL JUDGE AND J.M.F.C. -II COURT AT BIDAR BY ENHANCING THE MAINTENANCE AWARD IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL. RP NO. 200093 OF 2023 (397)

BETWEEN:

NEELKANTH
S/O DEVRAO GOKHALE,
AGE: 50 YEARS, OCC: POLICE CONSTABLE,
WORKING IN KSRP 6TH STATION,
PC. NO. 426 KALABURAGI IN
SULTANPUR CAMP KARNATAKA
R/O SANGAM VILLAGE,
TQ. AURAD-B DIST. BIDAR
KARNATAKA STATE-58531

... PETITIONER

(BY SRI. RAVI BHEEMSINGH CHAWAN, ADVOCATE)

AND:

VIJAYLAXMI
W/O NEELKANTH,
AGE: 40 YEARS, OCC: HOUSE HOLD,
R/O T0 MARZAPUR
TQ. AND DIST. BIDAR-585226.

... RESPONDENT

(BY SRI. MAHADEV S. PATIL, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C., PRAYING TO CALL FOR RECORDS AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF MAINTENANCE PASSED ON 06.11.2019 IN CRL.MISC.PETITION NO. 2202/2015 OF THE ADDL. CIVIL JUDGE AND JMFC AT

- 3 -

BIDAR WHEREBY APPELLATE COURT CONFIRMED IN CRIMINAL APPEAL NO. 21/2020 OF ADDL. DIST. AND SESSION JUDGE BIDAR JUDGMENT AND ORDER DATED 10.07.2023.

THESE PETITIONS, COMING ON FOR ADMISSION THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) Crl.RP.No.200070/2022 is filed by the petitioner/wife for enhancement of maintenance awarded by the learned I Addl. Civil Judge and JMFC-II, Bidar in Crl.Misc.No.2202/2015, which was upheld by the Prl. District and Sessions Judge, Bidar in Crl.Misc.No.96/2019.

2. Whereas Crl.RP.No.200093/2023 is filed by the petitioner/husband for reducing the maintenance amount awarded by the same Courts.
3. Heard learned counsel for the petitioner and learned counsel for the respondent.
4. The parties are referred to as their ranking in Crl.RP.No.200070/2022 for clarity.

NC: 2024:KHC-K:5793

5. The case of the petitioner is that she married the respondent on 04.05.2003 as per Hindu customs and out of wedlock two children were born namely Satyawan @ Sangmesh aged about 11 years and Nagesh aged 7 years in 2015. Previously the respondent was married to the sister of the petitioner and she died by committing suicide. A criminal case was registered against the respondent under Sections 498-A and 306 of IPC r/w Sec.3 and 4 of D.P. Act, which was settled between the parties and the petitioner got married to the respondent.

6. The respondent being a KSRP Police constable neglected the maintenance of the petitioner. Hence, the petitioner had filed a petition under Section 12(3) of Protection of Women from Domestic Violence Act, 2005. Respondent appeared in the matter through his counsel and filed a statement of objections and contested the matter. Finally, the Magistrate allowed the application in part by awarding Rs.5,000/- to the first petitioner and Rs.2,000/- each to the children as monthly maintenance, till they attain majority. Being aggrieved by the same, NC: 2024:KHC-K:5793 both the petitioner and respondent had filed an appeal before the Sessions Judge, where the learned Sessions Judge had dismissed those appeals and confirmed the order passed by the Magistrate. Hence, they

are before this Court.

7. Learned counsel for the petitioner contended that the petitioner had sought for Rs.10,000/- per month. But, the Trial Court only awarded Rs.5,000/- only. The children are studying in school and Rs.2,000/- per month is too meager sum and it is not possible to maintain the children in the said award. The respondent is working as a constable and earning Rs.58,000/- per month. Therefore, he seeks for enhancement of the award.

8. Per contra, learned counsel for the respondent also filed a petition for challenging the maintenance contending that the first son has already attained the age of majority and the second son will also attain majority in the near future. The petitioner has not produced the birth certificate nor any documents to prove their age or that they are studying. He was earning only Rs.40,000/- per NC: 2024:KHC-K:5793 month at the time of filing of petition. Therefore, the amount of compensation passed by the Magistrate and confirmed by the Trial Court is correct and there is no need for enhancement. In fact, it has to be reduced. Hence, he prays to dismiss the petition filed by the petitioner herein.

9. After hearing the arguments and perusing the records, the point that would arise for consideration is:

"i) Whether the Magistrate is justified in awarding Rs.5,000/- to the petitioner and Rs.2,000/- each to both the children?"

10. A perusal of the records would go to show that the relationship between the petitioner and respondent is not in dispute. Previously the respondent was married to the elder sister of the petitioner and she died by committing suicide. Hence, a criminal case was registered against the respondent and it was settled in compromise and the petitioner got married to the respondent. Out of their wedlock two children were born namely Satyawan and Nagesh, aged 11 years and 7 years respectively at the NC: 2024:KHC-K:5793 time of filing the petition. It is also admitted fact that the respondent is working as a police constable in KSRP and his salary was almost Rs.40,000 to Rs.50,000 at the time of filing of the petition. Now, his salary is increased to Rs.58,724, out of which Rs.15,383 is deducted towards the attachment made by the learned Magistrate for recovery of the arrears of maintenance and only Rs.255 is deducted towards benevolent fund, Arogya Bagya Scheme, etc.,. He is receiving DA, HRA, CCA and other allowances and his salary is Rs.58,724/-. Even the same was taken into consideration at the time of disposing the matter in 2019. Hence, the salary would be definitely more than Rs.50,000/- per month.

11. Such being the case, when it is admitted that the two children are born out of the wedlock of the petitioner and respondent, awarding Rs.5,000/- to the petitioner is little meager to meet her expenses like medical, clothing, food and accommodation. Apart from that, Rs.2,000/- each per children is also too little to meet the educational expenses of the children. The petitioner NC: 2024:KHC-K:5793 counsel has not produced any documents to prove the actual age of the children. Even otherwise, the order of maintenance in respect of the children is only till they attain majority. Hence, there is no need to interfere with the order awarding Rs.2,000/- each by the Trial Court.

12. However, by looking at the fact that the respondent is earning more than Rs.50,000 per month, out of which Rs.15,000/- is deducted towards arrears of maintenance, still he is getting more than Rs.45,000/- per month. Therefore, the maintenance awarded to the petitioner is very little and the same needs enhancement.

13. The petition is pending for almost more than 9 years. Arrears of maintenance is Rs.5,40,000/- to the first petitioner and Rs.4,80,000/- to the children, out of which more than Rs.5,00,000/- has been paid by the respondent and out of remaining amount Rs.2,00,000/- has been paid before this Court and he is paying arrears from his salary attachment. If, Rs.2,000/- per month is enhanced from the date of the petition for the first petitioner, it will meet the ends of justice. Accordingly, following order:

NC: 2024:KHC-K:5793 ORDER i. The Criminal Revision Petition No.200070/2022 is allowed in part. ii. Maintenance of Rs.5,000/- is enhanced to Rs.7,000/- per month to the petitioner from the date of the petition and Rs.2,000/- per month to each children is confirmed.

iii. Criminal Revision filed by the Petition

No.200093/2023,

respondent/husband is hereby dismissed.

Sd/-

(K NATARAJAN) JUDGE NJ Ct:SI

P Venkata Rao vs State By East Zone Women Police on 19 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

-1-

NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 9587 OF 2021
C/W
CRIMINAL PETITION NO. 5517 OF 2022,
CRIMINAL PETITION NO. 10761 OF 2022

IN CRL.P.NO.9587/2021

BETWEEN:

1. P. VENKATA RAO,
S/O B. APPALA NAIDU,
AGED 68 YEARS,
2. RAJESH POLLAROWTHU,
S/O P. VENKATA RAO,
AGED 38 YEARS,
(REP BY HIS GPA HOLDER
Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA
3. SMT. UMA PARVATHY,
W/O P. VENKATA RAO,
AGED 61 YEARS,
4. SMT. VANDANA,
W/O RAAM KUMAR,
AGED ABOUT 39 YEARS,

PETITIONER NO.1 TO 4 ARE
R/AT NO 150, 2ND CROSS,
OM RESIDENCY LAYOUT,

-2-

NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

BEHIND TAR FACTORY,
KODIGEHALLI MAIN ROAD,
BENGALURU - 36.

...PETITIONERS

(BY SRI. S.N. BHAT., ADVOCATE)

AND:

1. STATE BY EAST ZONE WOMEN POLICE,
BENGALURU - 560 001.
REPRESENTED BY S.P.P.,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SMT. S. GAYATHRI,
W/O RAJESH POLLAROWTHU,
AGED ABOUT 28 YEARS,
R/AT NO.178, 4TH CROSS,
MUNIYAPPA LAYOUT,
K.R.PURAM,
BENGALURU - 560 036.

AND ALSO R/AT NO.107/F,
B.B.ROAD, PERAMBUR,
CHENNAI,
TAMILNADU - 600 039.

...RESPONDENTS

(BY SMT.WAHEED, HCGP FOR R1;
SRI.B.V.MANJUNATHA, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.29688/2021 ON
THE FILE OF VI ADDL.C.M.M., BENGALURU FOR THE OFFENCE
P/U/S 498(A), 323, 504 R/W 34 OF IPC AND SECTION 3 AND 4

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

OF DOWRY PROHIBITION ACT, CHARGE SHEET FILED BY THE
1ST RESPONDENT POLICE.

IN CRL.P.NO.5517/2022

BETWEEN:

1. MR.BABU RAO,
SON OF NAGAMIAH,
AGED ABOUT 65 YEARS,
2. MRS.GAYATHRI,
DAUGHTER OF MR.BABU RAO,
AGED ABOUT 28 YEARS,
BOTH ARE RESIDING AT
NO.107/F, FIRST FLOOR,
B.B.ROAD, PERAMBUR,
CHENNAI - 600 011.
3. SHRI.M.PURUSHOTHAMAN,
SON OF SATHYA RAO,
AGED ABOUT 46 YEARS,
NO.32/301, H.P.NAGAR,
EAST COLONY, VASHINAKA,
CHEMBUR,
MUMBAI - 400 074.

...PETITIONERS

(BY SRI. BHARATHRAJ J., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY
K.R.PURAM POLICE STATION,
BENGALURU - 560 036.

-4-

NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

2. SHRI. VENKATA RAO, MALE,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD, K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1;
SMT.KATHYAYINI DEVI, ADVOCATE FOR
SRI.V.LAKSHMI KANTH RAO, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO QUASH THE FIR REGISTERED BEFORE K.R.PURAM P.S., AT BENGALURU IN CR.NO.401/2020 AND ALL FURTHER PROCEEDINGS AS AGAINST THE PETITIONERS IN C.C.NO.51278/2022 ON THE FILE OF THE HON'BLE X A.C.M.M., BENGALURU FOR THE OFFENCE P/U/S 341, 323, 506 READ WITH 34 OF IPC INITIATED BY THE RESPONDENT THROUGH THE COMPLAINT/P.C.R NO.51156/2020.

IN CRL.P.NO.10761/2022

BETWEEN:

MRS.DURGA,
W/O BABU RAO,
AGED ABOUT 63 YEARS,
RESIDING AT NO.107/F BB ROAD,
PERAMBUR,
CHENNAI - 600 039.

...PETITIONER

(BY SRI. BHARATHRAJ J., ADVOCATE)

-5-

NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

AND:

1. THE STATE OF KARNATAKA,
BY K.R.PURAM POLICE STATION,
BENGALURU,
KARNATAKA - 560 036.
2. SHRI. VENKAT RAO POLAROWTHU,
S/O B. APPALA NAIDU,
AGED 66 YEARS,
SHRI.DURGA NILAYAM,
150, 2ND CROSS,
OM RESIDENTIAL LAYOUT,
KODIGEHALLI MAIN ROAD,
K.R.PURAM POST,
BENGALURU - 560 036.

...RESPONDENTS

(BY SMT.RASHMI PATEL, HCGP FOR R1)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT DATED 06.02.2020 IN PCR NO.51156/2020 BEFORE THE X A.C.M.M., BENGALURU (ANNEXURE - A) AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS

DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE N S SANJAY GOWDA

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NC: 2024:KHC:28217
CRL.P No. 9587 of 2021
C/W CRL.P No. 5517 of 2022
CRL.P No. 10761 of 2022

ORAL ORDER

Criminal Petition No. 9587/2021 arises out of the complaint lodged by the wife against her husband and her in-laws. Crl.P.Nos.10761/2022 and 5517/2022 arise out of the criminal compliant lodged by the father-in-law and the mother-in-law against the wife-Smt. Gayathiri w/o Rajesh Polatowthu and her relatives.

2. Today, a joint compromise memo is filed in all the three petitions, the terms of which, read as follows:

"Both the petitioner and respondent file this joint compromise memo as follows:

During the mediation in the Presence of the Honourable Judge of the Metropolitan Magistrate, Additional Mahila Court dated 06.07.2024, at Chennai, the petitioner No 2 herein in Criminal petition No: 5517/2022 and the petitioner no 2 herein in CRL.P 9587/2021 agreed to settle the issues amicably on the following terms:-

1) The petitioner MRS GAYATHRI and the respondent MR. RAJESH POLAROWTHU felt that their marriage had irretrievably broken down due to NC: 2024:KHC:28217 their difference of opinion and incompatibility.

Therefore, they have decided to settle the issues amicably by filing this Joint Compromise Memo.

2) The respondent paid part payment of Rs.5,00,000/- (Rupees Five lakhs) to the petitioner Gayathri by way of D.D. No. 000995 Dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore and the same is received by the petitioner Gayathri and the respondent Rajesh .P has agreed to pay the balance amount of Rs.13,00,000/- (Rupees thirteen Lakhs) at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

3) The Respondent/petitioners have no objection to quash the following cases filed by each other and also against their family members.

b. The 2nd respondent Venkat Rao has no objection to allow the CRL.Ptn No: 5517/2022 and 10761/2022 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed by Gayathri and others and Durga for quashing the CC No: 51278/2022 charged for offences U/s 341, 323, 506 IPC pending on the file of the Additional Chief Judicial Magistrate, Mayo Hall, Bangalore City.

NC: 2024:KHC:28217 b. The 2nd respondent Gayathri has no objection to allow the CRL.Ptn. No: 9587/2021 pending before the Hon'ble High Court of Karnataka for quashing the proceedings filed by Venkat Rao for quashing the CC No: 29688/2021 charged for offences U/s 498(A),323,504 and 34 IPC read with section 3 and 4 of DV Act pending on the file of the Additional Chief Metropolitan Magistrate, Mayo Hall, Bangalore City.

C. The petitioner/Rajesh filed a Dissolution of Divorce Petition in MC No: 735/2020 U/s 13(1) (i-a) that was initially filed in the Court of Honourable Principal Family Judge at Bangalore and the same that has been transferred to the Honourable Family Court at Chennai as O.P. No. 1655/2023 which is already closed as per the compromise memo.

d. Both parties have withdrawn the Conjugal Rights Petition in H.M.O.P.No.3067/2020 U/s Section 9 of the Hindu Marriage Act in Honourable 1st Additional Family Court at Chennai which is already closed as per the compromise memo.

e. Both parties have withdrawn Maintenance petition U/s 125 in M.C.No.108/2022 in Honourable 1st NC: 2024:KHC:28217 Additional Family Court at Chennai which is already closed as per the compromise memo.

g. Domestic Violence Petition in DVC.No.18/2022 at Metropolitan Magistrate, Additional Mahila Court at Egmore, Chennai which is already closed as per the compromise memo.

4) It is further agreed that the Respondent will return the Sridhana articles consisting of one set of gold Bangles, two gold rings, one gold necklace, one gold chain, and one silver pot to Petitioner and the Petitioner will return one Mangalyam Chain, one Mangalasutra, one gold ring and one pair of silver anklet to the respondent at the time of Final disposal of the joint petition filed under 13(B) of the Hindu Marriage Act 1955 at Chennai.

5) Further, the Petitioner will close the joint locker account 00000036224683995 in State Bank of India, KR Puram Branch, Bangalore after withdrawing all the cases by the parties and closing any account in the name of the petitioner located at Bangalore.

6) Both the petitioner and respondent undertake, not to file any enquiries pertaining the personal information, complaint against each other before the

NC: 2024:KHC:28217 police authorities or court of law or before any all- India Government forum between each other and their family members and should not disturb the each other's future marital life.

(7) The Petitioner waive her right to claim any past, present or future maintenance from the Respondent's title interest, possession, inheritance, succession or claim over the movable and immovable properties for which the Petitioner has also agreed. The same was acknowledged by the Respondent.

8) The Respondent waive his right to claim any past, present or future maintenance, from the Petitioner's title interest, possession, inheritance, succession or claim over the movable and immovable properties of the Petitioner and the same was agreed by the Respondent.

9) Both the parties do not have any grievance against each other and their family members and they have duly and peacefully settled the same to their entire satisfaction.

10) Whereas the parties hereto do not have any grievance left against each other including their family members, therefore, in view of the same,

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NC: 2024:KHC:28217 they have further undertaken that they shall not level any legations against each other or each other's parents or each other's family members cause to act in a manner so as to harm the each other family's on basis of the caste, social class, reputation and image of the other, in the family or the society at large.

11) The parties have mutually agreed that after the Petitioner receives Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) and an additional of Rs 2,00,000/- (Rupees Two Lakhs Only) towards the missing Gold ornaments as agreed by both parties totalling Rs. 18,00,000.00/- (Rupees Eighteen Lakhs only) as Permanent alimony, both petitioner and respondent or their family members shall not have any claim left against the other Party or their family members of any kind whatsoever and they will not claim any type of maintenance, alimony etc., as it is a full and final Alimony which covers all the claims of the respective parties.

12) It is further agreed between the parties that in case of breach/violation or wilful/deliberate disobedience of either the settlement deals or its terms and conditions, the party breaching the terms, shall be liable for contempt proceeding and

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NC: 2024:KHC:28217 the party aggrieved shall be entitled for status quo- anti in every possible way.

13) Respondent and Petitioner also agreed along with m. family members and known people that they will not initiate or pursue any legal case, complaint, claim, inquiry pertaining the personal

information, or any appeal against each other and their family members via known or unknown source.

14) That the above said settlement and its terms and conditions have been entered and executed between the parties with their free consent and the consent of their respective family members with their will and without any force, undue pressure, influence, misrepresentation or mistake (both law and fact) in any form, and statement, agreement has been correctly recorded the said agreed terms are without any inducement or coercion from any corner whatsoever.

15) For the reasons stated above in this joint compromise memo it is respectfully prayed that this Hon'ble Court be pleased to record this joint compromise memo in the above in CRL.Pet. 5517/2022, CRL.P 10761/2022 and CRL. Pet. 9587/2021 and On the file of this Hon'ble High Court of Karnataka and consequently order quashing

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NC: 2024:KHC:28217 of the CC No: 29688/2021 on the file of Additional Chief Metropolitan Magistrate, Bangalore City and CC No: 51278/2022 on the file of the Additional Chief Metropolitan, Mayo hall, Bangalore City, as settled and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case in the interest of justice and equity."

3. The husband and wife are present before the Court and the wife admits the execution of compromise petition and also submits that she has received a sum of Rs.5,00,000/- by way of D.D.No.000995 dated 08.07.2024 of Axis Bank, Hoodi Branch, Bangalore from her husband and agrees to receive the balance amount of Rs. 13,00,000/- as indicated in the joint compromise memo.

4. In view of the fact that the dispute is essentially, between the two families which arose out of a marital dispute, it would be appropriate to accept the compromise memo and quash both the proceedings in

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NC: 2024:KHC:28217 C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore.

Accordingly, proceedings in C.C.Nos.29688/2021 and 51278/2022 pending on the file of the Addl. Chief Metropolitan Magistrate, Bangalore are quashed.

Consequently, the Criminal petitions are allowed.

Sd/-

(N S SANJAY GOWDA) JUDGE JS CT:SN

R Ramesh Rao vs The Chairman on 2 August, 2024

Author: B M Shyam Prasad

Bench: B M Shyam Prasad

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 2ND DAY OF AUGUST, 2024
BEFORE
THE HON'BLE MR JUSTICE B M SHYAM PRASAD
WRIT PETITION NO. 50964 OF 2012 (S-RES) C/W
WRIT PETITION NO. 35645 OF 2012
WRIT PETITION NO. 35646 OF 2012

IN WP NO. 50964/2012:

BETWEEN:

SRI. V.R.SOMWANSHI S/O. RAMRAO
AGED ABOUT 56 YEARS,
RESIDING AT NO.249, "INDIRA NIVAS",
NEAR BASAVA TEMPLE,
BASHTTIHALLI INDUSTRIAL AREA,
DODDAALLAPUR-561 203,
BANGALORE RURAL DISTRICT.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

Digitally signed
by VINAYAKA B V AND:
Location: HIGH
COURT OF
KARNATAKA
DHARWAD
BENCH

1. THE MANAGEMENT OF
DHARWAD
Date: 2024.08.14 KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
10:40:44 +0530

A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO.2479, BELLARY ROAD, HEBBAL,
BANGALORE-560 024.

2. THE MANAGING DIRECTOR

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024.

3. THE APPELLATE AUTHORITY

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

KARNATAKA STATE AGRO CORN PRODUCTS LTD.,
A GOVERNMENT OF KARNATAKA UNDERTAKING
POST BOX NO. 2479, BELLARY ROAD, HEBBAL,
BANGALORE-560024, BY ITS MEMBER.

... RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO,
QUASH THE ORDER OF TERMINATION ORDER DATED 25.1.06
VIDE ANNX-H PASSED BY THE R2 HEREIN
QUASH THE ORDER DATED 20.3.07 PASSED BY THE R2 VIDE
ANNX-A4; QUASH THE ORDER DATED 28.5.07 PASSED BY R2
VIDE ANNX-A6; QUASH THE SHOW CAUSE NOTICE DATED
29.6.07 PASSED BY R2 VIDE ANNX-A7
QUASH THE MINUTES OF THE CORPORATION MEETING
NO.201 DATED 21.11.11 OF THE R3 VIDE ANNX-A14.

IN WP NO. 35645/2012

BETWEEN:

T R SRINATH
S/O. LATE T N RAMAMURTHY,
AGED ABOUT 53 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, DODDABALLAPURA UNIT,
SINCE ILLEGALLY DISMISSED FROM SERVICE,
AND R/A NO.2479, BELLARY ROAD,
HEBBAL BANGALORE-560024.

. . PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR
SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN

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NC: 2024:KHC:30778
WP No. 50964 of 2012
C/W WP No. 35645 of 2012
WP No. 35646 of 2012

PRODUCTS LIMITED,
P.B.NO.2479, BELLARY ROAD,
HEBBAL, BANGALORE-560024.

2. THE MANAGING DIRECTOR
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

...RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 25.1.2006 & 25/27-01-07 UNDER
ANN-H AND N TO THE WP PASSED BY THE DISCIPLINARY
AUTHORITY & ORDER DATED 03.1.2012 PASSED BY THE
APPELLATE AUTHORITY COMMUNICATED TO THE PETITIONER
BY COMMUNICATION DATED 3.1.12 UNDER ANN-Q TO THE WP
BY ISSUE OF WRIT IN THE NATURE OF CERTIORARI & GRANT
ALL CONSEQUENTIAL BENEFITS.

IN WP NO. 35646/2012:

BETWEEN:

R. RAMESH RAO S/O. S. RAMADAS,
AGED ABOUT 56 YEARS,
EARLIER WORKING AS
DEPUTY GENERAL MANAGER,
KARNATAKA STATE AGRO CORN
PRODUCTS LIMTIED, MYSORE UNIT,
SINCE ILLEGALLY DISMISSED
FROM SERVICE, & R/A FLAT NO.1,
VISHAL APARTMENTS, NO.21,
MODEL HOUSE STREET,
BASAVANAGUDI, BANGALORE-560024.

...PETITIONER

(BY SRI. P.S.RAJA GOPAL, SENIOR ADVOCATE FOR

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NC: 2024:KHC:30778

WP No. 50964 of 2012

C/W WP No. 35645 of 2012

WP No. 35646 of 2012

SRI. S.V.BHAT, ADVOCATE)

AND:

1. THE CHAIRMAN
KARNATAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.
2. THE MANAGING DIRECTOR
KARNAAKA STATE AGRO CORN
PRODUCTS LIMITED, P.B.NO.2479,
BELLARY ROAD, HEBBAL,
BANGALORE-560024.

. . . RESPONDENTS

(BY SRI. SUBRAMANYA M., ADVOCATE A/W
SRI. B.C.PRABHAKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, QUASH THE ORDER DATED 25.1.2006 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACPL/MD/2005-06/3650 (UNDER ANNEXURE-K TO THE WRIT PETITION); ORDER DATED 25/27.1.2007 PASSED BY THE DISCIPLINARY AUTHORITY IN NO.KSACP/ADM/2854/06-07 (UNDER ANNX-R TO THE WRIT PETITION; AND ORDER DATED 3.1.2012 NO.KSACP/ADALITHANIRVAHANE /1240/2011-12 PASSED BY THE APPELLATE AUTHORITY (UNDER ANNX-T TO THE WRIT PETITION) BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI & DIRECT THE RESPONDENT BY ISSUE OF A WRIT IN THE NATURE OF MANDAMUS TO REINSTATE THE PETITIONER INTO SERVICE FORTHWITH WITH ALL CONSEQUENTIAL BENEFITS INCLUDING PAYMENT OF ALL BACK WAGES AND INCIDENTAL SERVICE BENEFITS THAT FLOW FROM QUASHING OF ANNEXURES-K, R & T AND ETC.

THESE WRIT PETITIONS, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:30778

ORDER

The petitioners have called in question the orders of the Disciplinary, Appellate Authorities and the orders of forfeiture, and one of the petitioners has also called in question show cause notices/ orders issued for forfeiture of certain alleged losses causes to M/s Karnataka State Agro Corn Products Limited [the Corporation]. The details of these impugned orders/ show cause notices are as follows:

Details of Details of the orders Details of the the writ of the disciplinary show cause orders of petition and appellate notices for forfeiture authorities forfeiture W.P.No. (i) Termination (i) Show cause The Order order No. notice bearing No. 50964/2012 KSACPL/ MD/ bearing No. KSACP/ADM/44 2005/ 06/3649 KSACP/ADM 1/07-08 dated [Sri.V.R. dated 25.01.2006 /3261/06-07 passed by the dated 28.05.2007 Somvanshi] Disciplinary 20.03.2007 (Annexure-AF) Authority [Annexure [Annexure-H]. AD]

(ii) The minutes of (ii) Show the Corporation cause Meeting No.201 notice dated 21.11.2011 bearing No. passed by the KSACP/ADM Appellate /SC/697/07 Authority -08 dated [Annexure-AP] 29.06.2007 [Annexure-

AG] W.P.No. (i) Order dated The show The order dated 25.01.2006 cause notice 25/27.01.2007 NC: 2024:KHC:30778 35646/2012 passed by the for forfeiture is in No. Disciplinary not impugned. KSACP/ADM/28 [R.Ramesh Authority in No. 54/06-07 Rao] KSACPL/MD/200 (Annexure-R) 5-06/ 3650 (Annexure-K)

(ii) Order dated 03.01.2012 No KSACP/ Adalitha Nirvahane/1240/ 2011-12 passed by the Appellate Authority (Annexure-T) W.P.No. (i) Order dated The show (i)The order 25.01.2006 cause notice dated 25/27-01-

35645/2012	passed by the for forfeiture is 2007 passed by
	Disciplinary
[Sri. TR	not impugned.
Srinath]	the Disciplinary
	Authority in No.
	KSACPL/MD/200
	Authority in No.
	5-06/365 (under
	Annexure-H to the
	Writ petition).
	KSACP/ADM/28
	55/06-07
	[Annexure-N]
(ii) Order dated	
03.01.2012 No.	
KSACP/Adalitha	
Nirvahane/1241/	
2011-12	
[Annexure-Q].	

A brief statement of facts:

2. The petitioners were employed with the Corporation as Unit Heads. The Corporation, a State Government Undertaking incorporated for production and supply of supplementary/nutritious food for women in the family way and children below the age of six years, has established its food processing units in places such as NC: 2024:KHC:30778 Bengaluru, Belgaum, Mysuru, Chitradurga, Raichur and Doddaballapur. The Corporation contends that Food Specialists such as the petitioners are appointed as Unit Heads to oversee the function of these units and that given the expertise of these Food Specialists/ Unit Heads, they are vested with the full responsibility of ensuring quality of the supplemental and nutritious food to be provided to the women and children.

2.1 The Union Government's Integrated Child Development Scheme [ICDS] is also implemented through the Corporation. This scheme is inter alia to provide nutritious and fortified food [energy food/energy food mixes] to the beneficiaries through the concerned Anganwadi Centers. The Corporation has delivered wheat procured from Public Distribution System [PDS] to private millers to supply wheat rava to Anganwadi Centers. The Corporation contends that the Unit Heads, who were required to invite tenders from private millers, finalize contracts for supply of PDS Wheat and receive wheat rava, NC: 2024:KHC:30778 were also required to ensure quality and then supply the same to the Anganwadi Centers.

2.2 The State Government has appointed an Officer of the Indian Administrative Services Cadre [Sri R. B. Agwane] to investigate the reasons for complaints about lack of quality in the wheat rava supplied to the Anganwadi centers and the delay in supply as well. Sri R. B. Agwane has filed his report concluding that the Corporation has failed to supply soya fortified rava and has caused loss to the State Government to an extent of Rs.1.29 crores. Sri. R. B. Agwane's conclusions, while emphasizing that an enquiry would be necessary in order to examine the possibility of wheat being sold in the open market by private traders to make profits without processing the same particularly, read as under.

The Karnataka State Agro Corn Products limited, Bangalore has failed to supply Soya fortified rava to the extent of 9.956 MTs and therefore all the Child Development project Officers have purchased plain rava of 6.397 MTs at the price ranging from Rs 9.50 to Rs 15.25 per kg, presuming they have paid an NC: 2024:KHC:30778 average price of Rs 12.50 per kg. Then they have incurred an expenditure of Rs 8 crores. The cost of 6397 MTs Rava at Karnataka State Agro Corn Products limited price of soya fortified rava @ Rs 10,500 per MT would be ($6397 \times 10,500 = 6.71$ crores) and therefore it is concluded that had the Karnataka State Agro Corn Products limited supplied all the committed quantity at Rs. 10.50 per kg the excess Rs 1.29 crores would not have been incurred by the Child Development project Officer's. Therefore, the Karnataka State Agro Corn Products limited is responsible for this loss caused to the Government.

3. The Corporation, acting upon Sri R.B. Agwane's report, has appointed Sri N.S. Sangolli, a retired District Judge, as an Inquiry Officer to investigate into the possibilities of PDS wheat being sold in the open market to make profits. This Court must observe that the contemplated investigation was into [i] the total quantity of wheat allotted to and lifted by the Corporation between the years 1993-1994 and 1996-1997, [ii] the total quantity of wheat issued to the private traders by the Corporation and the quantity lifted by them, quantity of wheat supplied by the private mills to the Corporation and the delay therein,

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NC: 2024:KHC:30778 and [iii] the quantity of energy food/energy food mixes supplied by the Corporation under the ICDS projects.

4. Sri N.S. Sangolli has filed his Report detailing his visits to the Corporation's processing units at Mysuru, Chitradurga, Doddaballapur and Raichur and his interaction with the personnel. Sri N.S. Sangolli's final conclusions in his Report are extracted hereafter, and he has also opined that the beneficiaries of the ICDS scheme are denied benefits, despite the public exchequer being expanded for those purposes, because of misunderstanding between the supplier and the receiver. The conclusion referred to above reads as under:

Thus, it is clear from the discussions made above with reference to the material available there is no proper execution of the scheme and that there is mis-use of PDS Wheat particularly by the General Manager and no proper financial control was exercised by Finance Manager in the Head Office and Unit Heads at each unit particularly Unit Head of Chitradurga at the relevant time. I have no hesitation here to opine that this sort of mishandling and mismanagement of allotment, lifting and using the PDS wheat has forced certain Zilla Panchayats to purchase rava at higher

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NC: 2024:KHC:30778 rates particularly, Mysore so that the object of the Scheme is achieved and the beneficiaries, i.e., Children, pregnant women, etc., are supplied Energy Food and Food Mixes. But as stated above it is General Manager and Finance Manager in the Head Office during that period and Unit heads of all the units generally and Unit head of Chitradurga unit during that period according to me are the cause for the failure of the scheme so to say."

5. These are the preliminary exercises undertaken by the State Government and the Corporation before the petitioners are served with the corresponding articles of charges. The details of the charges served on the petitioners¹ for misconduct are as follows. The general imputation of misconduct is dishonesty in connection with the business of the Corporation, willful insubordination, negligence or neglect of duties, disobedience of orders/instruction issued by the management, breach of Service Rules and causing huge financial loss to the Corporation.

1 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 The details of the charges against The conclusions of the Inquiry the petitioner in Officer [IO] W.P.No.50964/2012 - Sri. V.R. Somwanshi [Annexure G] [Annexure E] As regards Charge No.1 [charge 1(a)-(c)]

(a) The petitioner has failed to achieve optimum utilization of the unit's capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat rava and the history of such utilization before the committee while awarding contracts to private millers.

These charges are not proved as there is no evidence.

(b) The petitioner has failed to devise management of production schedules to meet the requirement of Department of Women and Child and therefore Contributing to the loss of Rs.1.29 crores.

(c) The petitioner has failed to maintain quality of production The petitioner has admitted in his cross examination that he As regards Charges 2(a) to (c): has accepted wheat rava 20 days prior to the date M/s.

Brundavan Flour Mills lifted

(a) The petitioner has not PDS Wheat and that the observed proper procedures petitioner has also admitted

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NC: 2024:KHC:30778

in engaging private milers for
converting wheat into wheat
rava and in allowing M/s.
Brundavan Flour Mills

Bengaluru to supply 39.730
MTS of wheat rava 20 days
prior to lifting of PDS wheat
in violation of the directives of
the Corporation.

that he has accepted 2.29
MTS of Wheat Rava 30 days
beyond the date this Flour
mill lifted wheat.

The petitioner neither
maintained the record of
quantity of PDS Wheat lifted

(b) In accepting 2.29 MTS of by the private millers nor wheat rava after a delay of maintained proper record of more 30 days from the date receipt of Wheat Rava from of supply of the PDS wheat. the private millers.

(c) Ignoring corporation's interests in receiving wheat The petitioner's admission rava supplies from M/s. should suffice and the Brundavana Flour Mills by not petitioner's explanation for ensuring quality and timely receiving 2.29 mts wheat delivery.

rava beyond 30 days viz., "Controlled Weighment of the last consignment" is not persuaded to take a different view.

Thus, charges 2(a), 2(b) and 2(c) require to be held as proved.

(d) The petitioner has suppressed This charge is not proved as information about the exact there is no evidence. time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

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NC: 2024:KHC:30778 Charge 3 and 4 These charges are not proved as there is no evidence.

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and mishandling the responsibilities as the Unit Head of Doddaballapur.

6. The Disciplinary Authority, while considering the Inquiry Officer's Report and the material introduced in evidence, has opined the following:

[A] that the IO has stuck to the material placed on record and the petitioner has neither stated why certain documents [marked as Annexure D series] are relevant and useful to him nor has he led any evidence in examination -in-chief to disprove charges.

[B] that the petitioner has not made any efforts to deny the contents in Ex M 1 [Sri NS Sangolli's Report] and Ex M2 [Sri. RB Agwane's Report] as being incorrect.

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NC: 2024:KHC:30778 [C] that Sri. NS Sangolli has opined that even the private millers engaged have benefited from the PDS Wheat lifted by them from the Corporation for conversion into wheat rava and this has resulted in the Corporation failing to honor its commitment to supply wheat rava to the concerned ICDS center within the agreed time ultimately compelling the Zilla Panchayats to make purchases from the open market by paying extra money and thereby incurring losses.

7. The Disciplinary Authority, though instances of misappropriation, embezzlement and negligence are not part of the imputations in the article of charges, has referred to various instances misappropriation and embezzlement of funds and negligence resulting in the failure of the Government's Scheme for benefit of the less fortunate class of people resulting with the punishment of termination from the services.

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NC: 2024:KHC:30778 The details of the charges The conclusions of the Inquiry against the petitioner in Officer [IO] W.P.No.35645/2012 - Sri T R Srinath [Enquiry Report in Annexure D] [Charge Sheet in Annexure A] These Charges framed against this petitioner are proved on the As regards Charge No.1 basis of the Sri NS Sangolli's [charge 1(a)-(c)] Report in Ex M Ex- 1. The findings of the IO are as follows:

(a) The petitioner has failed to achieve optimum utilization of the unit's • The petitioner, as seen in capacity by deliberately data of PDS Wheat lifted concealing the inhouse and received [Annexures capacity for conversion A1 and A2] during the of wheat into wheat years 1994-95 and 1995-

rava and the history of 1996], has not maintained such utilization before consistency or correlation the committee while between allotment and avoiding contracts to lifting of PDS Wheat from private millers. Food Corporation of India's Godown by private millers and receipt of wheat rava is in 100:50 ratio.

(b) The petitioner has failed to devise and manage production schedules to • The Mysore Unit has not meet the requirement of followed proper Department of Women procedures in connection and Child and with allotment of PDS Contributing to the loss Wheat to the unit, lifting of of Rs.1.29 crores. PDS Wheat by private millers and supply of Wheat Rava back to the

(c) The petitioner has unit.

failed to maintain
quality of production.

• The petitioner, who has

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As regards Charges 2(a) to
(d):

(a) The petitioner has not

got himself examined as
his defense witness, has
admitted in his cross
examination that there
was delay of 25 days and
more in respect of

observed proper acceptance of 8.262 MTS
procedures in engaging out of the total quantity of
private millers for 225 MTS of wheat rava
converting PDS wheat from M/s Manjunatha
into wheat rava and Flour Mills.

allowing north Karnataka Flour mills to lift wheat from godowns • at places other than the location.

The petitioner has himself contended that acceptance of delayed materials was within his powers.

- (b) The petitioner has accepted supplies of • 15.645 MTS of Wheat Rava from M/s Nandi Roller Flour Mills and

The petitioner has failed in achieving of the object of the ICDS Scheme.

22.845 MTS of Wheat These charges leveled against Rava from Manjunatha the petitioner are proved.

Flour Mills which were delayed beyond a period of 25 days and 22 days respectively.

- (c) The petitioner has ignored the interest of the corporation in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.

- (d) The petitioner has suppressed the information about the exact time of issue of wheat to the private millers and the time of

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supply of wheat rava by these private millers.

Charge 3 and 4

The petitioner has knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation, mishandling the responsibilities as the Head of the Weaning Food Unit Mysore.

8. The Disciplinary Authority has opined that there is no perversity in the IO relying upon the documents produced by the Corporation and the petitioner has not stated why certain documents [Annexure D series] marked from his side are relevant and useful to him nor has he led any evidence in examination-in-chief to disprove charges; that he has not asserted that contents in Sri N.S. Sangolli's Report and Sri. RB Agwane's Report are factually incorrect. The Disciplinary Authority has further opined that though the management's witness has been cross-examined at length, the veracity of evidence adduced on behalf of the management remains unshaken. Ultimately, the

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NC: 2024:KHC:30778 Disciplinary Authority, while opining that the petitioner's mismanagement of allotment of lifting the PDS Wheat and untimely delivery of Wheat Rava has compelled the Zilla Panchayats secure the same at higher rates in Mysore has caused loss to the Corporation has imposed the punishment of termination from services.

The details of the charges The conclusions of the Enquiry against the petitioner in Officer [IO] W.P.No.35646/2012 - Sri R. Ramesh Rao [Enquiry Report in Annexure F] [Charge Sheet in Annexure C] As regards Charge No.1 The IO, after a detailed reference [charge 1(a)-(c)] to Sri. N.S. Sangolli's report and the petitioner's cross examination, has concluded that all the

(a) The petitioner has failed charges leveled against the to achieve optimum petitioner are proved because of utilization of the unit's the following. capacity by deliberately concealing the inhouse capacity for conversion of wheat into wheat • The petitioner has not rava and the history of maintained documents in the such utilization before unit to show the capacity of the committee while the unit for the conversion of awarding contracts to wheat into wheat rava. This private millers. shows that the petitioner has not considered the optimum capacity of his unit before

(b) The petitioner's failure awarding contracts to private to manage production millers and not followed the

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schedules to meet the requirement of Department of Women and Child and Contributing to the loss of Rs.1.29 crores.

- (c) The petitioner's failure in maintaining the quality of production

As regards Charges 2(a) to (d):

- (a) The petitioner has not observed proper procedure in engaging private millers for converting wheat into wheat rava and has allowed the lifting of PDS Wheat by private millers without any authority and transferred it to the other units of the Corporation without following the guidelines laid down by the Corporation.

- (b) The petitioner has neither maintained the records of the quantity of PDS Wheat lifted by the private millers nor maintained proper record on receipts of wheat rava from the private millers more particularly from M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill.

procedure in engaging the private millers.

- Sri. NS Sangolli's report and certain data show that ratio of the wheat is to wheat rava supplied by millers is in 100:50 but it should have been 100:100.
- The petitioner has not carried out proper procedures to engage private millers.
- Since the petitioner has not maintained the dates of supply of Wheat Rava from the private traders, some items of supplies were found to be delayed by 20 to 60 days and thereby affecting the quality of supplies.

- (c) The petitioner has delayed supplies of 20 MTS of Wheat Rava from M/s Srinivasa Industries, Raichur and 150 MTS of Wheat Rava from M/s North Karnataka Roller Flour Mill, Belgaum by a delay of 20 days and 60 days respectively over the acceptable timeline.
- (d) The petitioner has ignored the Corporation's interest in receiving the supplies of wheat rava from the millers by not ensuring quality and timely delivery.
- (e) The petitioner has not suppressed information about the exact time of issue of wheat to the private millers and the time of supply of wheat rava by these private millers.

As Regards Charge 3,4 and 5:

Charge 3:

The petitioner has lifted 2046.236 MTS of Wheat from Food Corporation of India and sent the same to units at Doddaballpur and Mysore without proper authorization and thereby causing financial losses to the company and in contravention to the directives

of the Corporation issued in March 1996.

Charge 4 and 5:

The petitioner is knowingly and willingly failed to ensure the implementation of the ICDS Scheme bringing disrepute to corporation and has mishandled the responsibility entrusted to you as the Unit Head for the Weaning Food Unit at Chitradurga and are indirectly responsible for the financial losses.

9. The Disciplinary Authority has opined,

referring to the instances of by M/s Srinivasa Industries, Raichur and M/s North Karnataka Roller Flour Mill lifting wheat as mentioned in Sri. NS Sangolli's report, that the petitioner has not followed proper procedures in engaging private millers for converting wheat into wheat rava. As regards the non-consideration of the capacity of the unit before awarding contracts to the private millers, the Disciplinary Authority has concurred with the IO's findings. Further, the Disciplinary Authority, as in the case of the

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NC: 2024:KHC:30778 other two instances, has considered various instances of the petitioner's misappropriation and embezzlement of funds before imposing punishment. This petitioner is also imposed with the punishment of termination from the services.

10. The petitioner in W.P.No.50964/2012 [Sri V. R. Somwanshi]2 has impugned the Disciplinary Authority's order dated 25.01.2006 as also the Appellate Authority's order dated 20.03.2007 in W.P.No.15650/2006 apart from the show cause notices/ and orders issued for forfeiture of certain losses to the corporation because of his alleged failures in supply of soya milk. This W.P.No.15650/2006 is disposed of on 20.09.2011 quashing the Appellate Authority's order dated

20.03.2007 restoring the matter to the Appellate Authority observing that this authority shall consider the grounds of appeal and pass just orders. This Court must record that it is clarified that the appellate authority must ascertain whether the petitioner is 2 The petitioners, whenever referred individually, are referred to by their names for reasons of convenience

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NC: 2024:KHC:30778 directly involved in the financial irregularities. This Court's order in this regard reads as under:

"In that view of the matter, it is ordered, the order of the appellate authority is quashed and the matter is remitted to the appellate authority who shall take into consideration the ground of appeal and pass appropriate orders. It is also made clear, whether the petitioner is directly involved in financial irregularity or not is a matter to be ascertained by the appellate authority."

11. Sri V.R. Somwanshi has carried this order in intra court appeal in W.A.No.17026/2011 and during its pendency, the appellate authority has disposed of the appeal by its order dated 03.01.2012. The Division Bench in view of this order dated 03.01.2012 has disposed of the writ appeal in W.A.No.17026/2011 on 24.09.2012 observing that the appeal is rendered infructuous and reserving liberty to challenge such order leaving open all contentions to be considered.

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12. The Appellate Authority, while considering the question whether Sri. V.R. Somwanshi is responsible for the financial irregularities, has re-iterated the earlier conclusion that the Unit Heads of concerned/DGM - Finance must be held responsible for the loss caused to the Government in the implementation of ICDS project; that the Unit Heads had the responsibility to ensure delivery of products as prescribed by the Government and according to the standards prescribed, and because Sri V.R. Somwanshi, as a Unit Head, has not conformed to the specifications, he must be held liable for the financial losses caused to the Corporation. The Appellate Authority has also referred to the opinion of the Disciplinary Authority that the punishment of termination from service is justified not only because of the present charges but also instances of earlier misappropriation and embezzlement.

13. The petitioners in W.P.No.35645/2012 and W.P. No. 35646/2012 [Sri T.R. Srinath and Sri R Ramesh Rao respectively] have also filed their corresponding writ

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NC: 2024:KHC:30778 petitions in W.P.No.17095/2007 and 17092/2007 impugning the show cause notices issued to them and the Disciplinary Authority's orders. These writ petitions are disposed of

by a common order dated 18.02.2011, and once again remitting the matter to the Appellate Authority to dispose of the appeal filed by them in accordance with the grounds urged in the appeal memorandum. The petitioners have carried this common order in intra court appeals in W.A.No.18049/2011 and 18045/2011. The petitioners have filed Memo/s for withdrawal placing on record that the Appellate Authority has passed orders in the month of January 2012 and that they may be given liberty to call in question such orders. The afore writ appeals are disposed of on 21.06.2012 in view of the memo filed by them and reserving liberty.

14. The Appellate authority has disposed of these petitioners' appeals with conclusions which read as follows:

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NC: 2024:KHC:30778 The Dismissal from services of the company is the appropriate penalty for the proved charges of misconduct. The disciplinary authority has taken a lenient view and also to meet the end of justice used the word 'termination' which was upheld by the Appellate Authority. More so, the word 'termination' is as good as dismissal. Literally, termination means "to bring or to come to an end or limit". Dismissal means to send or put away. In both cases the service of an employee is put to an end. So considering the grounds urged by Sri T.R. Srinath and Sri Ramesh Rao are to be dismissed from services under 8.3 (vii) of the Service Rules of KSACL.

15. Sri P.S. Rajagopal, the learned Senior Counsel for the petitioners, submits that this Court must interfere with the Disciplinary and Appellate Authorities' orders because [i] the charges against the petitioners are vague and they have not been given fair opportunity; [ii] there is no evidence against the petitioners to opine that the charges [as vague as they are] are proved; [iii] the Disciplinary Authority has travelled beyond the charges in opining that the imputations of financial and other

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NC: 2024:KHC:30778 irregularities amounting to misconduct are proved because of certain antecedent allegations of misappropriation and embezzlement though they are not mentioned in the charges; [iv] the Corporation's Service Rules do not even contemplate termination from service.

16. Sri P.S. Rajagopal elaborates on these grounds as follows.

On charges against the petitioners being general in nature and vague:

16.1 The imputations against the petitioners are such as that they have failed to achieve Optimum utilization of inhouse capacity, that they failed to devise and manage production schedules, and that they have not observed proper procedure in engaging private millers for converting wheat into wheat rava. In the case of Sri. V R Somwanshi the first of the afore allegations is said not to be proved but in the case of Sri R. Ramesh Rao and Sri T R Srinath, crucially based on the very same evidence, it

is opined that the allegations are proved.

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NC: 2024:KHC:30778 16.2 According to the Corporation, the proven charges against Sri V.R. Somvanshi are that he received 2.29 mts of wheat rava even before wheat was supplied and a certain other quantity of wheat rava was received beyond the prescribed period and that he has not followed the Guidelines in engaging the services of private millers. However, the charges do not even mention the details of the procedure that he was required to follow. The Corporation has referred to its directives in the matter of engaging private millers, for supply of wheat and for receipt of wheat rava but these directives are not mentioned in the charges.

16.3 In the case of Sri R Ramesh Rao and Sri T.R. Srinath the other imputations are that they have not observed proper procedure in engaging private millers, that wheat is delivered to private millers without due authorization and without following the Corporation's Guidelines, that they have permitted certain private millers, even outside their zones, to lift wheat without proper records. Even as against these allegations, the relevant

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NC: 2024:KHC:30778 Guidelines are not mentioned in the charges and the charges do not mention the quantities that these petitioners have supplied without records.

16.4 The petitioners have been denied a fair opportunity to know the specific charges against them because the charges against them are completely silent about the Directives/ Guidelines issued and the specific instances where there is either delay in receiving wheat rava or in allowing private millers to lift wheat, or in wheat rava being delivered even before lifting wheat. The charges against the petitioners should have been specific furnishing all the necessary details to afford them a fair opportunity of defending themselves against the imputations.

16.5 On the question of vagueness of charges, it is settled law that a plain reading of the charges and the statement of stipulations [if any], must show the exact nature of the allegations. The requirement in law for charges to be specific is embedded in the basic principle that a reasonable and adequate opportunity must be extended to

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NC: 2024:KHC:30778 the delinquent to defend himself/herself and if the delinquent is not told clearly and definitely what the allegations are against him, he/she cannot project defense imagining the circumstances in which the allegations are made. The Apex Court, in Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another³ when vague charges were made against a Bank official, has set aside the subject orders reiterating the afore proposition on definite charges affording a reasonable opportunity as enunciated in its earlier decision in Surath Chandra Chakrabarty v. State of West Bengal⁴.

On lack of evidence to reasonably conclude that the Charges against the petitioners are proved:

16.6 The corporation has examined Sri R. B. Agwane and Sri N.S. Sangolli and marked their reports in evidence. This is the only evidence placed on records.

However, Sri R.B. Agwane's report is not marked in its entirety and the portion marked does not bear his signature. 3 [2011] 14 SCC 379 4 2009 (12) SCC 78

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NC: 2024:KHC:30778 The report has certain annexures, and even those annexures are not marked. Sri N.S. Sangolli's report is marked but such report is based on interaction with certain persons at the units, but the statements recorded during such interaction are not placed on record.

16.7 The Inquiry Officer based on these documents has concluded that the charges as against the petitioners are proved because of reasons such as that they have not undermined the ocular evidence or the efficacy of the reports but has overlooked that the allegations related to transactions done over a period of time and not substantiated by any evidence. The conclusions against Sri Ramesh Rao and Sri T R Srinath based on ratio in the supply of wheat and receipt of wheat rava is presumptuous and not backed by documents apart from being inconsistent.

16.8 As against Sri V.R. Somavamshi, the Inquiry Officer, without any evidence, has opined that he has not maintained any records and the petitioner has admitted that he has received wheat rava beyond 30 days

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NC: 2024:KHC:30778 and even before supplying wheat. Similarly, as regards the imputations against Sri R. Ramesh Rao and Sri T.R. Srinath, the reliance is only on Sri N.S. Sangolli's report and certain data. The report, even if it could be relevant, should have been supported by the ocular evidence of those who have given statements, or in the least by furnishing and producing the statements recorded during the relevant time.

16.9 Sri N.S. Sangolli has not specifically spoken about the procedure that was required to be followed or the records not maintained to indicate the alleged breach. The Inquiry Officer, as in the case of Sri. V.R. Somwanshi even in the case of these two persons, has opined that there is an admission about receiving belatedly certain quantity of wheat rava, but these observations are totally contrary to the evidence on record as none of the three have admitted to anything.

16.10 The settled law is that there must be fairness in the conduct of the proceedings because such fairness will be part of the principles of natural justice. In

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NC: 2024:KHC:30778 the present case, only if all the relevant material to show the prescribed procedures and the breach were brought on record, it could be opined that the petitioners were given opportunity and if these materials are not brought on record, this Court must opine that the proceedings are not in accordance with fair play.

As against the Disciplinary Authority going beyond the Charges in opining that the imputations are proved.

16.11 The charges against the petitioners, though vague, are because of certain imputations, but the Disciplinary Authority has proceeded to opine that they must suffer termination from service because of other instances of wrong doing in procuring fortified food for different schemes and because they have displayed a consistent conduct of causing loss to the Corporation and that it will not be in the Corporation's interest to continue the petitioners' services. Irrefutably these other allegations are completely outside the purview of the imputations made

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NC: 2024:KHC:30778 against the petitioners as part of the article of charges served on them.

16.12 The Disciplinary Authority, even if it could have opined that the petitioners must suffer the extreme punishment of termination from service [dismissal from service], it should have been based only on the charges served on them and not because of any allegation that is extraneous to such charges. The Disciplinary Authority has thus, traversed beyond the charges and the material placed on record in opining that the petitioners must suffer termination from service, and the Appellate Authority has completely overlooked this aspect.

16.13 To underscore that the Disciplinary Authority's decision cannot be on the basis of surmises and presumption; that there must be acceptable proof [evidence] of the imputations; that there must be fair in Inquiry proceedings; that an Inquiry Officer cannot travel beyond the records to opine that person is guilty and if the inquiry officer thus go beyond the records, any disciplinary action

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NC: 2024:KHC:30778 based is only illegal, reliance is placed upon the decision of the Apex Court in Narinder Mohan Arya v. United India Insurance Company Limited⁵, while inviting this Court's attention more specifically to paragraph 26 thereof. On the orders for forfeiture and termination:

16.14 The Corporation has caused orders and show cause notices to the petitioners alleging that, because of their negligence and alleged violation of the respective directors/guidelines, they have caused financial losses to the Corporation and therefore, the salary, gratuity and earned leave must be forfeited. The Service Rules do not contemplate forfeiture and the Rules contemplate recovery when there is proven financial loss either because of negligence or breach of orders, but the

Disciplinary Authority in forfeiting the amount/s as indicated above has imposed a punishment that is not contemplated under the Service Rules.

5 2006 (4) SCC 713

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NC: 2024:KHC:30778 16.15 As regards the petitioners' case that they are essentially terminated from service and that termination is not contemplated as penalties under the Corporation's Service Rules, it is canvassed that the only punishments that are contemplated is [a] dismissal from service, [b] compulsory retirement, [c] reduction to a lower grade or post or lower time scale or lower stage in time scale and [d] recovery from pay the actual pecuniary loss caused by negligence or breach⁶. It is also canvassed that the termination from service is only when there is contractual employment not otherwise⁷.

16.16 The decision of the Apex Court in Vijay Singh v. State of Uttar Pradesh and Others⁸ is relied upon. Apart from recovery of the losses caused, and imposing fines, censuring and withholding increment.
7 Rule 8.3 explanations (vi) and (vii) of the Corporation's Service Rules:

(vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement.

(vii) Termination of an employees on administrative grounds other than disciplinary measures as provided under the Rules, as the said authority may specify, where no such provision specify, the employees shall be paid 50% of the basic pay and dearness allowances based on such amount

8 2012 (5) SCC 242

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NC: 2024:KHC:30778 upon to buttress the petitioner's case that the disciplinary proceedings are regulated and controlled by the statutory rules, and therefore, the disciplinary authorities while performing the quasi-judicial function, are not permitted to ignore the statutory rules. The contention is that there must be strict adherence to the Rules and any punishment outside the purview of the statutory rules is a nullity and cannot be enforced against the petitioner. The reliance is on the following paragraph from this decision.

"15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

17. Sri. M. Subramanya, the learned counsel for the Corporation, submits that the petitions insofar as they are filed challenging the Disciplinary Authority's orders cannot be sustained, and if at all the petitioners could be

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NC: 2024:KHC:30778 aggrieved, it could only be as against the Appellate Authority's order dated 03.01.2012. The learned counsel submits that when the petitioners first impugned the Disciplinary Authority's orders before this Court in the earlier writ proceedings, this Court has categorically opined that the Disciplinary Authority's orders cannot be faulted because of the findings recorded by the Inquiry Officer, and that this Court has also concluded that the petitioners have been granted sufficient opportunities and there is no error in the decision making process.

18. Sri. M..Subramanya argues that the petitioners' have called in question this Court's orders in their corresponding intra-court appeals, but these appeals are disposed of because of the memo filed by the petitioners, and such disposal does not in any manner dilute the findings as regards the decision making process and the merits of the Disciplinary Authority's order. The learned Counsel also canvasses that the petitioners who have participated in the inquiry proceedings without contending

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NC: 2024:KHC:30778 that the charges are vague cannot now raise such ground now, especially after the first round of litigation.

18.1 Sri. M. Subramanya next submits that each of the petitioners has categorically admitted in the cross examination that they did not have the authority to receive wheat rava belatedly or to receive rava even before the Millers are permitted to lift wheat. In this regard, the learned counsel relies upon the following in the Disciplinary Authority's order in the case of V.R. Somwanshi:

The charge sheet officer has admitted in his cross examination that it is true that he accepted wheat rawa 20 days prior to the lifting of wheat by Brundhavan Flour Mills. He has accepted delayed receipt exceeding 30 days over and above the acceptable period.

Sri. V.R.Somavamshi has come out with truth in his cross examination that he has accepted 2.29 metric tons of wheat rawa after delay of 30 days from Brundhavan Flour mills but the reason given by him that it was controlled weighment of the last

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NC: 2024:KHC:30778 consignment does not convince me to take a different view.

Insofar as Sri R. Ramesh Rao and Sri T.R. Srinath, the learned counsel canvasses that the Inquiry Officer, based on the suggestions by these officers to the Corporation's witnesses [and materials produced by these persons], has opined that documents have not been maintained to show the capacity of the units under their supervision, that the dates of supply from private traders are not maintained and the wheat rawa is received in different ratios though as per the agreement dated 06.09.1996 the wheat rawa had to be supplied in the ratio of 100:100.

18.2 Sri M.Subramanya submits that the Inquiry Officer has considered evidence viz., the suggestions in the cross examination of the witnesses, the documents produced by the petitioners and the two reports. Therefore, it cannot be gainsaid that the Inquiry Officer's opinion and the Disciplinary Authority's orders are based on evidence. The learned counsel proposes to rely upon the decision of the

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NC: 2024:KHC:30778 Apex Court in the State Of Haryana Vs Ratan Singh reported in AIR 1977 SC 1512 to contend that the provisions of the Indian Evidence Act,1872 are not required to be complied with while conducting an inquiry and that if reasonable and credible material are brought on record, the conclusions arrived at in the departmental proceedings cannot be interfered with. The learned counsel emphasizes the following exposition in the decision.

"4. It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act, 1872 may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case- law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

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NC: 2024:KHC:30778 18.3 The learned counsel also relies upon several decisions of the Apex Court to contend that Courts will not interfere with the findings in disciplinary matters unless it is shown that the conclusions are clearly without evidence or perverse, and that the Courts will not substitute its conclusions either in the matter of credibility of evidence or quantum of punishment, but there is no detailed reference to these authorities in view of the fact that Sri. P.S.Rajagopal does not dispute the propositions underscored by these decisions.

19. In the light of the rival submissions, the questions for consideration are as follows:

[a] Whether this Court must interfere with the Disciplinary/ Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence.

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NC: 2024:KHC:30778 [b] Whether the impugned orders are vitiated in law because the Disciplinary/Appellate Authorities have considered material and circumstances that are extraneous to the Charges served on the petitioners.

[c] Whether the petitioners are served with penalty which is beyond the contemplation of the Services Rules.

[d] Whether there is any justification for interference with the decision to recover any amount from the petitioners' salary and gratuity/encashment of earned leave.

20. This Court, even before these questions are considered, must examine whether these questions would be open for consideration in view of the conclusions in the earlier writ proceedings. The petitioners have impugned the Disciplinary Authority's impugned orders in the first round of litigation, and indeed each of these writ petitions are disposed of with certain observations. These observations are essentially in the context of the narrow band within which the grievances against the conclusion of the

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NC: 2024:KHC:30778 disciplinary proceedings are examined, and this Court has opined that the petitioners have not been able to demonstrate any fallacy in the decision-making process as they are given sufficient opportunity.

20.1 However, this opinion has not remained the last words on the controversy inasmuch as each of the petitioners have called in question such opinion in their corresponding intra court appeals but without the advantage of interim order as against the limited relief of remand granted by this Court calling upon the Appellant Authority to examine their grievance that the Disciplinary Authority's decision to terminate their services is despite the fact that termination is not contemplated as a penalty under Rule 8 of the Service Rules. As such, the Appellate Authority, during the pendency of these intra court appeals, has examined this grievance, and when it is brought to the notice of the concerned Division Benches, either with a memo or otherwise, the writ appeals are disposed of with liberty.

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NC: 2024:KHC:30778 20.2 This Court must refer to the orders of the concerned Division Bench in writ appeal in WA No. 17026/2011 [writ appeal by Sri V R Somawamshi], and this order essentially reads as under:

According to the learned counsel for the respondent No.2, this appeal has become infructuous because pursuant to the appellant's signature, the appellant authority has already passed an order in the month of January 2012. If it is so, we are of the view that the present appeal is become infructuous. If the petitioner is aggrieved by the order passed by the appellant authority, is at liberty to challenge the same. All contentions are kept open.

The orders in the other two intra court appeal, reserving liberty, are essentially because of memo/s filed with a request to call in question the Appellant Authority subsequent orders dated 03.01.2012 leaving all contentions open.

20.3 The question, whether the petitioners' grievance as against the Disciplinary Authority's orders

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NC: 2024:KHC:30778 remains open for consideration, will have to essentially turn on the expanse of the liberty reserved by the Division Bench. The petitioners' grievance with this Court's opinion on they being given sufficient opportunity and that there is no fallacy in the Disciplinary Authority's orders was pending consideration in the intra court appeals, which are disposed of because of the Appellate Authority subsequent orders on the question whether the petitioners' services could be terminated under the Service Rules without examining the petitioners' grievance as against this Court's opinion. If the Division Benches were of the opinion that the petitioners cannot have any grievance as against this Court's opinion, it would not be unreasonable to opine that there would have been a categorical and unequivocal expression in that regard, or in the least a qualified liberty reserved only to challenge the Appellate Authority's orders.

20.4 In the absence of either any comment by the Division Benches on the petitioners' grievance as against this Court's conclusion or limiting the liberty reserve to call in question just the appellate authority's orders in specific

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NC: 2024:KHC:30778 terms, this Court is of the considered view that the examination in the present proceedings cannot be limited just to the merits of the Appellate Authority's orders. This Court refer to the expressions "all contentions are kept open"

and "reserving liberty" employed by the Division Benches.

As such, the questions framed must be examined for a decision on merits.

On Question [a]9

21. The essence of the charges against the petitioner is that [a] they have deliberately not achieved optimum utilization of the concerned units capacity and they have suppressed the necessary details from the concerned resulting in the decision to award the contract a private millers, [b] they have not managed production scheduling, [c] there is either delay in receiving wheat rava from the private millers or they have received wheat rava even before supplying wheat to the millers, [d] they have 9 Whether this Court must interfere the Discipline/Appellate Authorities' orders on the grounds that [i] the charges against the petitioners are vague and general, [ii] the petitioners have not had reasonable opportunity, and [iii] the conclusions are not based on evidence

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NC: 2024:KHC:30778 received wheat rava in the ratio far lesser than the prescribed ratio [100:50 as against 100:100], [e] they have permitted private millers, even millers from outside the jurisdiction, to draw wheat without records. The imputation is that the petitioners have been deliberate and negligent in the above intending to cause pecuniary losses to the corporation.

22. The Apex Court in Surath Chandra Chakrabarty vs. State of Bengal and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another [supra] has held that the grounds on which disciplinary action is proposed must be reduced to the form of a definite charge/s and they have to be communicated to the person concerned and that this rule embodies the principle that specific contents afford a reasonable and adequate opportunity for defending oneself. The Apex Court has also opined that if a person is not actually informed about the allegations in clear and definite terms, he cannot possibly, by projecting his own imagination, discover all facts and

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NC: 2024:KHC:30778 circumstances that may be in the contemplation against him.

22.1 The Apex Court in its later decision in Anant R. Kulkarni vs. Y.P.Education Society and others¹⁰, referring to these decisions and also certain earlier decisions, has reiterated these propositions in the following terms:

Thus, nowhere should a delinquent be served a charge- sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge- sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which

formed the basis of charges and no enquiry can be sustained on vague charges.

10 2013 6 SCC 516

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NC: 2024:KHC:30778 22.2 The first set of charges against the petitioners is that they have failed to achieve optimum utilization of the corresponding Unit's capacity. The petitioners contend that this charge is vague because the Corporation has not indicated the necessary material in the charge sheet to justify that there was a certain fixed Optimum Capacity and that the petitioners have failed to achieve the same on one particular occasion, or on multiple occasions. Their case is that these and other details had to be produced. Admittedly, the petitioners have functioned as the respective unit heads over a period of time. This Court must opine that if the imputation is that there was a certain Optimum Capacity, and the units were not put to full use of such capacity, it was incumbent upon the Corporation to furnish these two indices and the details of the period during which there is shortfall. This Court must also opine that if these details are furnished as charges/statement of imputations such charges and imputation will lack details and therefore, vague.

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NC: 2024:KHC:30778 22.3 It is argued on behalf of the Corporation that the petitioners have participated in the proceedings and at this stage, they cannot raise this ground. However, the Apex Court has clearly exposed that if the charges are vague and the evidence adduced is perfunctory, the proceedings are not saved only because the concerned have not taken a defense in this regard and the dispositive test is whether the concerned knew about the allegation.

22.4 Significantly, in the case of Sri. V.R. Somwanshi on similar charge [the failure to optimize capacity], the Inquiry Officer has opined that the charge is not proved, but in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, the Inquiry Officer has opined that the charges are proved. This Court, in the light of the discussion in the Inquiry Report/ Disciplinary Authority's Orders [the Appellate Authority has not considered these aspects] cannot discern how it could be so in one case and not in the other cases. Perhaps it could be observed that the vagueness in the charge has even confused the Inquiry Officer and the Disciplinary Authority.

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NC: 2024:KHC:30778 22.5 The other charges against the petitioners are that they have either received wheat rava beyond the scheduled period or even before supply of wheat. In the case of Sri. V.R. Somwanshi it is alleged that the corresponding numbers are 39.730 mts and 2.29 mts. On his behalf it is contended that he was working as unit head over a period of time and there is supply of wheat and receive of wheat rava during this period and that unless the charge specifically mentioned that he received a particular quantity during a particular period or supplied a particular quantity during a particular period, he could not have defended against this allegation.

22.6 This Court must observe that there is considerable force in this contention. If Sri. V.R. Somwanshi was indeed put on notice, as part of the charges, that he had during a particular period, either received wheat rava without supply of wheat or received wheat rava beyond a particular time, he would have known what he was up

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NC: 2024:KHC:30778 against. The Inquiry Officer¹¹ has opined that the charges against the Sri. V.R. Somwanshi are proved because he has admitted in his cross-examination that he has received the aforesaid quantities.

22.7 The Disciplinary Authority has extracted cross examination by Sri V R Somwanshi [as also the other petitioners in the corresponding orders and the extracted portions in each of the orders are the same]. However this Court, on reading of such extracts, must observe that there is no such admission either by Sri V R Somwamshi or the others. Therefore, the opinion that there is admission and as such there is proof of the charge is wholly erroneous. ¹¹ "The charge sheeted officer has admitted in his cross-

examination that it is true that he accepted wheat rava 20 days prior to the lifting of wheat by Brindavan Flour Mills.... Sri. Somwanshi has come out with truth in his cross- examination that he has accepted 2.29 M.Ts of wheat rava after delay of more than 30 days from Brindavan Roller Flour Mills, Bangalore. But the reason given by him that it was on account of controlled wighment of the last consignment does not convince me to take a different view of the matter."

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NC: 2024:KHC:30778 22.8 Indeed, it is trite that strict rules of evidence, will not apply in departmental proceedings, but the requirement of definite charges and believable evidence is a part of fair play that is integral to the proceedings. In this context, this Court must observe that the purported admission, though not required to be of the sterling quality as it should be under the general rules of evidence, it must reasonably indicate a categorical acknowledgement.

22.9 The next set of charges are that both Sri. R. Ramesh Rao and Sri. T.R. Srinath have not observed proper procedure in engaging the services of private millers and they have permitted the private millers to lift wheat without due authorization and without maintaining records. Here again, the charges do not mention the prescribed parameters that were required to be followed to afford a reasonable opportunity to them to offer a plausible explanation to vindicate their stand that charges are falsely laid against them. This Court must opine that they would have been extended a reasonable opportunity only if they

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NC: 2024:KHC:30778 were put on notice of the relevant directives and guidelines issued and the specific instances of failure.

22.10 The Inquiry Officer and Disciplinary Authority have opined that these charges, which in this Court's opinion are vague, are proved because of a certain ratio that was required to be maintained in the supply of wheat and receipt of wheat rava relying upon certain observations in the reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane without indicating the definite roles played by each of these petitioners. As regards the ratios and the details referred to in these reports and the efficacy of such reports, this Court must observe that it is based on data and orders and agreement concluded by the Corporation. However, this agreement is not referred to in the charge or in the material brought on record. The report also refers to ratio of 100:50, 100:75 and 100:100, and if any particular ratio is to be the dispositive factor, the petitioners should have been put on notice of the period during which that fallen short and if they have fallen short by varying ratios for over a period of time, the details thereof.

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NC: 2024:KHC:30778 22.11 Further, the reports have certain annexures, and those annexures have not been introduced as evidence. In the absence of specific instances of failure to comply with the directives on engaging the services of private millers or the inadequacies and maintaining the records, this Court must opine that the vague and uncertain charges are held to be proved on the basis of no evidence. This Court must observe that these conclusions must also extend to other imputations such as failure to ensure implementation of the scheme and supply of wheat to millers outside what is described as the Units' area of operation.

22.12 This Court must therefore opine that the inquiry proceedings are commenced on the basis of vague and indefinite charges and the Inquiry Reports are filed opining that charges are proved without definite evidence and that the Disciplinary Authority has accepted these conclusions without considering the circumstances but only extracting extensively the contents of the Reports filed by Sri. N.S. Sangolli and Sri. R.B. Agwane and Inquiry

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NC: 2024:KHC:30778 Reports. The Appellate Authority, which should have gone into all the details, has also not gone into these details. This has resulted in the petitioners suffering a penalty without fair opportunity. Hence, the question [a] framed is answered accordingly.

On Question [b]12

23. The Disciplinary Authority, in the case of Sri. V.R. Somwanshi, after referring to the Inquiry Officer's report on the charges and the evidence as against such charges has also referred to certain instances to opine that he is not a person in whom any faith or trust could be reposed. The instances referred to are as follows:

- a) The alleged embezzlement of certain funds showing exorbitant expenditure during National Maize Mela 2001.

b) The allegation of utilization of substandard jaggery, dal and wheat for manufacture of energy food, during the year 1998-99.

12 Whether the impugned orders are vitiated in law because the Disciplinary Authority has considered material and circumstances that are extraneous to the Charges served on the petitioners

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NC: 2024:KHC:30778

c) The payment of higher rate of commission to M/s. Colonac International Limited, Chennai for the purchase of 36,524 gunny bags.

d) The alleged loses to the Corporation when he was working with the Corporations maize mill at Bengaluru.

23.1 This Court, on perusal of the Disciplinary Authority's order in this regard, must observe that the decision to impose the penalty of termination of the Sri. V. R Somwanshi's services is entwined by the consideration of the aforesaid circumstances along with the consideration of the Inquiry Officer's report. In the absence of any reference of these materials in the article of charge served on Sri. V.R. Somwanshi, this Court must opine that extraneous consideration have gone into the decision.

23.2 Similarly, in the case of Sri. R. Ramesh Rao, the Disciplinary Authority has referred to the alleged exorbitant rates paid to M/s. Christy Fried Gram Industries for purchase of ragi malt flour and the manner in which the responsibilities are discharged by him as the Chief Division

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NC: 2024:KHC:30778 Manger when he was posted as the Corporation's Head Office in Bengaluru, these instances are also not part of the article of charges. In the case of Sri. T.R. Srinath, though no specific instances as in the above two cases are mentioned, there is a general reference to he defrauding the company exhibiting "height of negligence and he being a security risk to the Corporation".

23.3 This Court must observe that these observations are not because of the outcome of the Inquiry proceedings but a general assessment of circumstances outside the scope of the inquiry to opine that the petitioners have failed to work with honesty and sincerity. These considerations must be held to be totally extraneous to the disciplinary proceedings and is in violation of the principles of natural justice because the inquiries are instituted not only to establish the truth but also to extend a reasonable opportunity to the concerned to establish his defense or vindicate his position for exoneration against specific charges. Hence, the question [b] framed is answered accordingly.

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NC: 2024:KHC:30778 On Question [c]13

24. The Disciplinary Authority, by the impugned orders, has directed the termination of the petitioners from their services, and it is contended that the Service Rules do not contemplate termination of a permanent employee, and the Rules contemplate termination of only those employees who are in contractual employment. This contention is in the light of the provisions of Rule 8.3 of the Service Rules which read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

- i)
- ii)
- iii)
- iv)
- v) Reduction to a lower grade or post or to a lower time scale or to a lower stage in a time scale;
- vi) Compulsory retirement.
- vii) Dismissal from service.

13 Whether the petitioners are served with penalty, which is beyond the contemplation of the Services Rules.

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NC: 2024:KHC:30778 Explanation:

The following shall not amount to a penalty within the meaning of this rule.

- i)
- ii)
- iii)
- iv)

v)

vi) Termination of services of an employee employed under an agreement in accordance with the terms of such agreement and

vii) Termination of services of employees on administrative grounds other than a disciplinary measure as provided for under the rules, as the said authority may in its discretion specify; and where no such proposition specified the employees shall be paid 50% of his basic pay and dearness allowance based on such amount."

24.1 It is trite that the expression dismissal and termination do not mean the same and they have their respective connotations though both bring about ceasing of employment. Generally, dismissal is a penalty imposed after opportunity under the relevant Service Rules as is required under Article 311 of the Constitution of India, and termination is not so as it will be upon contractual terms.

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NC: 2024:KHC:30778 As such, dismissal is stigmatic while the termination is not. Further, dismissal will result in denial of benefits, and termination need not be so as certain amounts may have to be paid according to the contractual terms.

24.2 The Corporation's Service Rules provide for both dismissal and termination of permanent employees. This Court must refer to Rule 2- 21 of the Service Rules apart from Rule 8. The termination under Rule 8-3 Explanation (vii) is for administrative reasons and other than as a disciplinary measure. If there is termination for administrative reasons, the concerned may specify the terms of severance, and if terms are not specified, the later part of the Explanation will come into play. Further, the provisions of Rule 2-21 of the Service Rules contemplate termination of a permanent [and a temporary] employee but on certain varying terms regarding notice period and the amount payable in lieu thereof. Crucially, for the purposes of the present case, this Court must opine that if there are disciplinary proceedings, the termination will be Dismissal

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NC: 2024:KHC:30778 from Service as contemplated under Rule 8-3(vii) of the Service Rules.

24.3 The petitioners have been extended opportunity to respond to certain imputations, and thereafter a decision, though not found justifiable because of the reasons as aforesaid, is taken to dismiss the petitioners. It is nobody's case that the petitioners are terminated for administrative grounds independent of the disciplinary proceedings. Therefore, this Court must opine that the petitioners have been served with the penalty of dismissal from service, and the Appellate Authority's reference to the provisions of Rule 8.3(vii) in its order dated 03.01.2012 is of no significance in the circumstances discussed. Therefore, this Court will not interfere with the orders of the Disciplinary Authority or Appellate Authority on the ground that the Corporation has travelled beyond the Service Rules in this regard.

On Question [d]14 14 Whether there is any justification for interference with the decision to recover from the petitioners' salary/gratuity/encashment of earned leave

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NC: 2024:KHC:30778

25. The decision to forfeit/ recover certain amounts from the amounts payable to the petitioners is not just because of the disciplinary proceedings discussed above, but also because of the conclusion in certain other proceedings and because of the show cause notices issued as regards certain alleged losses caused to the Corporation. In the case of Sri. V.R. Somwanshi, the decision to recover / forfeit is based on the departmental proceedings conducted by the Inquiry Officer Sri. Sosale Indudhar and certain show cause notices issued and the anticipation of the culmination of the civil proceedings, and in the case of Sri. R. Ramesh Rao and Sri. T.R. Srinath, it is because of the aforesaid disciplinary proceedings and certain losses alleged caused to the Corporation because of other transactions.

26. The details of the orders/ show cause notices and the nature of the amount/s proposed to be recovered/ forfeited are as follows:

The petitioner's name/ The The amount and its nature impugned Orders /Show recovered/ forfeited Cause Notices in this regard

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NC: 2024:KHC:30778 Sri. V R Somwanshi Rs. 2,45,409/- [Gratuity] and Rs 2,00,831/- [Leave Encashment] i] Order dated 20.03.2007 [Annexure AD] As against an ascertained loss of Rs. 80,71,152/-

ii] Order dated 28.05.2007 Rs. 18,518/- [Salary] [Annexure AF] As against loss of Rs. 27,903] caused the remaining [Rs. 9,385/-] to be collected by filing a civil suit.

Sri. T.R Srinath Rs. 15,435/- [salary]

Dated 25/27.01.2007 in Rs. 2,93,725 [Gratuity] and
Annexure N

Rs. 1,26,135/- [Leave
Encashment]

For recovery of a sum of Rs.
32,25,000/- with direction to
recover the remaining Rs.

27,89,705/- by filing a civil suit.

Sri R Ramesh Rao

Rs. 15,153 [Salary]

Dated 25/27.01.2007 in
Annexure R

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NC: 2024:KHC:30778

For recovery of Rs. 32,25,000/,
and to recover the remaining Rs.
32,09,847/- by filing a civil suit

26.1 The question whether the Corporation can forfeit the salaries, gratuity and Leave Encashment to recover its dues must be necessarily examined in the light of the provisions of Rule 8.3(v) and Rule 4-17 Note ii of the Service Rules and the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 in the light of decisions of the Apex Court in Mahanadi Coalfields Ltd. v. Ravindranath Choubey¹⁵ and Jyotirmay Ray v. Field General Manager, Punjab National Bank¹⁶. The Apex Court in these decisions, referring to the provision Section 4(6) and Section 14 of the Payment of Gratuity Act, 1972 and the relevant service regulations, has held that, with the provisions of Section 14 of this Act having overriding effect and the provisions of section 4(6)¹⁷ contemplating forfeiture of 15 (2020) 18 SCC 71 16 (2023) SCC Online SC 1452 17 Section 4(6) of the Payment of Gratuity Act reads as under:

(6) Notwithstanding anything contained in sub-section (1),--

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NC: 2024:KHC:30778 gratuity on dismissal of an employee, it would be open to an employer to forfeit gratuity. The relevant observations in the second decision are as follows:

The provisions of Gratuity Act make it clear that forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited.

26.2 The Corporation's Service Rules do not contemplate forfeiture of either gratuity or leave encashment

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of,

property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 6[may be wholly or partially forfeited]--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

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NC: 2024:KHC:30778 when there are disciplinary proceedings. However, the Rule 4-17 Note ii of the Service Rules read as under:

An employee who is discharged or dismissed from the services of the Corporation during the course of the year shall be paid earned leave wages for the number of days of earned leave at his credit at the time of his discharge or dismissal from the service of the Corporation as per the Section 15(4) of the Mysore Shops and Commercial Establishments Act, 1963 and Section 79(3) of the Factories Act, 1948.

It follows from the provisions referred to above that the Corporation can forfeit gratuity but insofar as earned leave, even when there is dismissal from service it must be paid subject to the aforesaid provisions. As regards salary, the provisions of the provisions of 8.3(iv) of the Service Rules read as under:

8-3 Penalties:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on the employees namely;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders of the competent authorities of the Corporation or State or Central Government.

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NC: 2024:KHC:30778 The Corporation is thus vested with the power to recover salary when there is pecuniary loss.

26.3 In the case of Sri V R Somwanshi the decisions to forfeit salary /gratuity/ earned leave [Annexure

- AD and AF, which are dated 20.03.2007 and 28.05.2007], are not because of the decision resulting from the disciplinary proceedings referred to above but are consequent to other proceedings in which the petitioner has not participated. This Court is not called upon to decide the merits of such proceedings, and therefore, there cannot be any interference on this ground with these orders.

26.4 The decision to forfeit salary /gratuity/ earned leave [Annexure - N in WP No. 35645/2012 which is dated 25/27.01.2007] in the case of Sri T R Srinath is because of the decision resulting from the disciplinary proceedings referred to above. With this Court opining that the decision to dismiss him from service is in the light of vague and general charges without evidence and in denial of fair

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NC: 2024:KHC:30778 opportunity in the proceedings, this order dated 25/27.01.2007 must be quashed.

26.5 In the case of Sri R Ramesh Rao, the decision [Annexure R dated 25/27.01.2007 in WP No. 35646/2012] is because of the conclusion of the departmental proceedings resulting in his dismissal from service which cannot be sustained in view of this Court's opinion in the present proceedings, but there is no decision to forfeit either gratuity or earned leave and the decision is only to forfeit salary in a sum of 15,153/- . However, as the decision to forfeit is because of the dismissal order, this Court must interfere with this decision.

ORDER [A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure -H], the Appellate Authority - Board's order dated 21.11.2011 [Annexure - AP] and the Order dated 03.01.2012 [Annexure - AN].

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NC: 2024:KHC:30778 [B] The question of payment of consequential benefits shall be considered subject to the orders dated 20.03.2007 and 28.05.2007 [Annexure AD and AF respectively].

In WP No. 35645/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority's Order dated 25.01.2006 [Annexure -H] and the Appellate Authority -

Board's order dated 21.11.2011/ the Order dated 03.01.2012 [Annexure - Q] and the Order dated 25/27.01.2007 [Annexure - N].

[B] The consequential benefits shall be paid by the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

In WP No. 35646/2012:

[A] The writ petition is allowed in part quashing the Disciplinary Authority' Order dated 25.01.2006 [Annexure-K] and the Appellate Authority -

Board's order dated 21.11.2011/ Order dated 03.01.2012 [Annexure - T] and Order dated 25/27.01.2007 [Annexure - R].

[B] The consequential benefits shall be paid to the petitioner subject to orders if any otherwise. The petitioner is reserved with liberty to file a representation with the Secretary, Department of Agriculture, Government of Karnataka enclosing a certified copy of this order within 6 [six] weeks from the date of receipt thereof.

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NC: 2024:KHC:30778 [C] The Secretary, Department of Agriculture, Government of Karnataka is called upon to communicate the outcome of such consideration within a period of 3 [three] months from the date of such representation.

Sd/-

(B.M.SHYAM PRASAD) JUDGE *NV Ct:vh

Shrinivas S/O. LakshmiKant Deshi vs Smt. Soubhagya Alias Aadya W/O. ... on 25 July, 2024

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NC: 2024:KHC-D:10581
WP No. 102459 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 25TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE VENKATESH NAIK T

WRIT PETITION NO. 102459 OF 2024 (GM-RES)

Digitally signed
by MANJANNA E
Location: HIGH
COURT OF
KARNATAKA

BETWEEN:

1. SHRINIVAS
S/O. LAKSHMIKANT DESHI
AGE. 36 YEARS,
OCC. PRIVATE SERVICE,
R/O. FLAT NO.202, VANDANA SAROVAR,
5TH A CROSS, JAKKASANDRA,
KORAMANGALA, 1ST BLOCK,
OPP. AGARA LAKE,
BENGALURU-560034
2. LAKSHMIKANT R. DESHI
AGE. 72 YEARS,
OCC. RETIRED,
R/O. FLAT NO.202,
VANDANA SAROVAR,
5TH A CROSS,
JAKKASANDRA,
KORAMANGALA,
1ST BLOCK,
OPP. AGARA LAKE,
BENGALURU-560034
3. SMT. VIJAYALAKSHMI
W/O. LAKSHMIKANT DESHI
AGE. 66 YEARS,
OCC. HOUSEHOLD WORK,
R/O. FLAT NO.202,

VANDANA SAROVAR,
5TH A CROSS,
JAKKASANDRA,
KORAMANGALA,
1ST BLOCK,
OPP. AGARA LAKE,

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NC: 2024:KHC-D:10581
WP No. 102459 of 2024

BENGALURU-560034

4. SMT. NAYANA
W/O. VISHNU REDDY
AGE. 41 YEARS,
OCC. HOUSEHOLD WORK,
R/O. FLAT NO.202,
VANDANA SAROVAR,
5TH A CROSS,
JAKKASANDRA,
KORAMANGALA,
1ST BLOCK,
OPP. AGARA LAKE,
BENGALURU-560034

...PETITIONERS

(BY SRI. K L PATIL, ADVOCATE)

AND:

SMT. SOUBHAGYA ALIAS AADYA
W/O. SHRINIVAS DESHI
AGE. 33 YEARS, OCC. HOUSEHOLD WORK,
R/O. BENGALURU,
NOW R/O. SAI NAGAR MUDHOL,
DIST. BAGALKOT-587313

...RESPONDENT

(BY SRI. D.M.MALLI, ADV. FOR
SRI.GANGADHAR HOSAKERI, ADV.)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH PROCEEDINGS
INITIATED AT CRI MISC.321/2023 ON THE FILE OF PRL CIVIL JUDGE
AND JMFC, MUDHOL VIDE ANNEXURE E, IN THE INTEREST OF
JUSTICE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN
'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:10581

WP No. 102459 of 2024

ORDER

1. Learned counsel for the petitioner and learned counsel for the respondent are present.
2. Learned counsel for the respondent has filed a memo. The contents of the memo are as under:

"The Respondent craves leave of this Hon'ble Court to file this Memo as under: -

That, due to oversight and without legal knowledge the Respondent had filed two criminal cases against the petitioners i.e., 1) Crl Misc No.173/2024 filed under the Protection of Women from Domestic Violence Act.2005. 2) Crl Misc 321/2023 filed under the Section 200 of Cr. P.C for the offence punishable under the Protection of Women from Domestic Violence Act. 2005. Both the Crl Misc are pending before the Prl Civil Judge and JMFC., Mudhol.

That, now the Respondent undertakes before this Hon'ble Court to withdraw the Crl Misc 321/2023 filed under the Section 200 of Cr. P.C for the offence punishable under the Protection of Women from Domestic Violence Act.2005 on the next date of hearing fixed on 17.08.2024. Further, the Respondent respectfully submits that she would pursue and prosecute Crl. Misc No. 173/2024 filed under the Protection of Women from Domestic Violence Act.2005 against the petitioners.

NC: 2024:KHC-D:10581 Hence, this Hon'ble Court may kindly be pleased to dispose of the instant petition in view of undertaking given by the respondent herein, to meet the ends of justice."

3. Learned counsel for the respondent submits that in view of the undertaking given by the respondent, the Court may quash the entire proceedings initiated in Criminal Miscellaneous No.321/2023 pending on the file of the learned Prl. Civil Judge and JMFC, Mudhol.
4. Submission is placed on record.
5. In view of the memo and supporting submission, the entire proceedings initiated in Criminal Miscellaneous No.321/2023 pending on the file of the learned Prl. Civil Judge and JMFC, Mudhol is hereby quashed.

6. In view of disposal of the main petition, pending I.As. if any, stands disposed off.

Sd/-

JUDGE AC/CT-AN

Smt Asfia Hussaini vs State Of Karnataka on 20 August, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:33404
CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2024

BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 2233 OF 2024
(439(2)(Cr.PC)/483(3)(BNSS)
C/W
CRIMINAL PETITION NO. 10377 OF 2023
CRIMINAL PETITION NO. 13275 OF 2023
IN CRL.P.NO.2233 OF 2024
BETWEEN:

1. SMT ASFIA HUSSAINI
W/O SRI HARISH KUMAR N M
AGED 39 YEARS,
CURRENTLY R/AT 402 B SRINIDHI RESIDENCY,
APARTMENTS, 364/2, 4TH FLOOR,
BASAVANAGAR MARATHAHALLI COLONY,
BENGALURU-560037.

...PETITIONER

Digitally signed
by KHAJAAMEEN (BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
L MALAGHAN
Location: High SRI. VENKATESH SOMAREDDI, ADVOCATE)
Court Of AND
Karnataka

1. STATE OF KARNATAKA
BY RAMAMURTHY NAGAR POLICE
STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560001.

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CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

2. SRI. HARISH KUMAR N M
AGED ABOUT 41 YEARS,
S/O LATE NANDANAHALLI MAHESH,
PRESENTLY RESIDING AT 673,
1ST MAIN, BANNIMANTAP B LAYOUT,
MYSORE-570015.

...RESPONDENTS

(BY SMT: ANITHA GIRISH, HCGP FOR R1;
SRI. SIDDARTH SUMAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 439(2) CR.P.C.,
PRAYING TO CANCEL THE BAIL GRANTED TO RESPONDENT
NO.2 AS PER ORDER DATED 23.10.2021 AND ALSO THE ORDER
DATED 04.01.2022 MAKIN THE INTERIM ORDER OF BAIL AS
ABSOLUTE PASSED IN CRL.P 7205/2021 AND FURTHER
RESPONDENT NO.2 BE DIRECTED TO SURRENDER BEFORE THE
TRAIL COURT WITHIN THE TIME THAT MAY BE FIXED BY THIS
HON'BLE COURT IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P.NO.10377/2023

BETWEEN

SRI. HARISH KUMAR N.M.
AGED ABOUT 41 YEARS,
S/O LATE D. MAHESH,
PRESENTLY RESIDING AT NO 673,
1ST MAIN, BANNIMANTAP B LAYOUT,
MYSORE-570015

...PETITIONER

(BY SRI. SIDDHARTH SUMAN, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY STATION HOUSE OFFICER,
RAMAMURTHY NAGARA P. S. POLICE STATION,

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CRL.P No. 13275 of 2023

BENGALURU-560005

REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BANGALORE-560001

2. SMT. ASFIA HUSSAINI
AGED ABOUT 38 YEARS,
W/O SRI. HARISH KUMAR N M,
NO 402 B. SRINIDHI RESIDENCY APARTMENTS
364/2,4TH FLOOR,
BASAVANAGAR, MARATHALLI COLONY,
BENGALURU-560037

....RESPONDENTS

(BY SMT. ANITHA GIRISH HCGP FOR R1;
SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.P.C.,
PRAYING TO QUASH THE FIR REGISTERED BY THE
RAMAMURTHY NAGAR P.S., DATED 16.07.2021 IN
CR.NO.246/2021 FOR THE OFFENCE PUNISHABLE UNDER
SECTION 506, 420 PENDING ON THE 10 TH ADDL. CMM
AGAINST THE PETITIONER I.E. ANNEXURE-A II) THE CHARGE
SHEET FILED BY THE RAMAMURTHY NAGAR POLICE STATION
DATED 18.10.2021 IN C.C.NO.56243/2021 PENDING ON THE
FILE OF THE X ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, MAYO HALL UNIT, BENGALURU FOR THE
OFFENCE PUNISHABLE UNDER SECTION 354, 504, 506 OF IPC
I.E ANNEXURE-C, III) THE ORDER DATED 28.10.2021 PASSED
BY THE COURT OF THE HON'BLE X ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT BENGALURU
IN C.C.NO.56243/2021 TAKING COGNIZANCE OF THE
OFFENCES PUNISHABLE UNDER SECTIONS 354,504,506 OF IPC
AGAINST THE PETITIONER I.E ANNEXURE-D PENDING BEFORE
THE HON'BLE X ADDITIONAL CHIEF METROPOLITAN

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CRL.P No. 13275 of 2023

MAGISTRATE, MAYO HALL UNIT, BENGALURU IN
C.C.NO.56243/2021.

IN CRL.P. NO 13275 OF 2023

BETWEEN

SRI HARISH KUMAR N M
AGED ABOUT 42 YEARS,
S/O LATE D. MAHESH,
PRESENTLY R/AT NO.673,
1ST MAIN,
BANNIMANTAP LAYOUT,
S.S.NAGAR,
BANNIMANTAP,
MYSORE-570015

...PETITIONER

(BY SRI.SIDDHARTH SUMAN, ADVOCATE)
AND

SMT. ASFIA HUSSAINI
AGED ABOUT 39 YEARS,
W/O SRI. HARISH KUMAR N M,
NO.402, B. SRINIDHI RESIDENCY APARTMENTS,
364/2, 4TH FLOOR, BASAVANAGAR,
MARATHALLI COLONY, BENGALURU-560037

...RESPONDENT

(BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C.,
PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
CRL.MISC.NO.156/2023 PENDING BEFORE THE HON'BLE
METROPOLITAN MAGISTRATE TRAFFIC COURT - I, BENGALURU
UNDER SECTION 12 OF PROTECTION OF WOMEN FROM

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DOMESTIC VIOLENCE ACT (HEREINAFTER REFERRED TO AS
THE PWDVA) I.E. ANNEXURE-A AGAINST THE PETITIONER.

THESE CRIMINAL PETITIONS HAVING BEEN RESERVED
FOR ORDERS ON 24.07.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, MADE THE FOLLOWING..

CORAM: HON'BLE MR JUSTICE K.NATARAJAN

CAV ORDER

Crl.P.2233/2024 is filed by the defacto/complainant

Smt Asfia Hussaini vs State Of Karnataka on 20 August, 2024
under Section 439 (2) of Cr.P.C. for cancellation of the bail
granted to the accused/husband by this Court in
Crl.P.No.7205/2021 vide order dated 23.10.2021 arising
out of Crime No.246/2021 of Ramamurthy Nagar police
station, Bengaluru.

2. Crl.P.10377/2023 is filed by the accused/husband
under Section 482 of Cr.P.C. for quashing the Criminal
proceedings in CC No.56243/2021 pending on the file of
the X ACMM, Bangalore arising out of Crime No.246/2021
registered by the Ramamurthy Nagar police station,
Bengaluru and charge sheeted for the offences punishable
under Sections 354, 504 and 506 of IPC.

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C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

3. Crl.P.No.13275/2023 is filed by the
accused/husband u/s 482 of Cr.P.C. for quashing the
criminal proceedings on the file of the Metropolitan
Magistrate Traffic Court-1 (MMTC-1), Bangalore in
Crl.Misc.No.156/2023 filed by the
complainant/petitioner/wife U/s 12 of the Protection of
Women From Domestic Violence Act, 2005(herein after
referred to as D.V. Act).

4. Heard the arguments of learned counsel for the
petitioner in Crl.P.No.13275/2023, 10377/2023 and senior

Smt Asfia Hussaini vs State Of Karnataka on 20 August, 2024
counsel appearing for the petitioner in Crl.P.No.2233/2024
and learned counsel for the respondent as well as learned
High Court Government Pleader appearing for the state.

5. The case of the petitioner Harish Kumar N.M. in
Crl.P.No.10377/2023 is that the respondent No.2
Smt.Asfia Hussaini filed a complaint to the Ramamurthy
Nagar police station on 16.07.2021, which was registered
in Crime No. 246/2021 alleging that the petitioner had

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cheated the complainant. The accused belongs to Hindu community and respondent No.2 is a Mohammedan. The accused told her that he is in love with her. Subsequently, both of them had love affairs between them from 2005 onwards. Later, in November 2005, at about 11:00 a.m., the accused with a false promise of marriage had sexual intercourse with defacto-complainant and again he had intercourse with her on 26.06.2021 at 3:00 p.m. Subsequently, he has failed to marry her on the ground that she is a Muslim and his family members are not accepting the marriage. He is said to have assaulted her by outraging the modesty on 26.05.2020 and abused her in filthy language and also cheated her. Hence, she has filed the complaint before the police and the police during the investigation arrested the accused petitioner and he

was remanded to judicial custody.

6. The bail petition of the petitioner was rejected by the Trial Court. Hence, he approached this Court by filing a petition under Section 439 of Cr.P.C. in
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Crl.P.No.7205/2021 and this Court heard the arguments.

During the argument, the counsel for the petitioner submitted that the accused is ready to marry the defacto-complainant. Therefore, this Court had granted interim bail and two months time was granted for the purpose of marriage and to produce the marriage certificate. Accordingly, the accused was released on bail. He subsequently, married the complainant and submitted the affidavit and marriage certificate before the Court on 04.01.2022. Accordingly, this Court made the interim bail as absolute.

7. Subsequent to the marriage, once again a dispute arose between the husband and the wife, that the accused said to be informed the defacto-complaint to withdraw the complaint against him. But, she refused to withdraw the complaint on the ground that she wants to wait for some more time to take decision of withdrawing the case and

she wants to wait for the change of behavior of the

accused/husband. Therefore, the accused-husband is
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before this Court by filing the petition for quashing the criminal proceedings, as he has already married the respondent. Therefore, the allegation of false promise and cheating does not arises, in view of petitioner/accused marring the defacto-complainant. Therefore, continuing the criminal proceedings is nothing of abuse of process of law. Hence, he prays for to quash the criminal proceedings against him.

8. Whereas, the Crl.P.No.2233/2024 is filed by the wife/defacto-complainant for cancellation of the bail granted to the petitioner/accused on the ground that the accused only for the purpose of getting out of the jail for only bail had made false representation and came out on bail. Subsequently, he has married the petitioner. It is alleged that soon after the marriage, the accused-husband forcefully thrown the complainant/wife out of the matrimonial home under the guise of Dhanurmasa month and even after completion of the said month, when she asked the accused to take her back to the matrimonial

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home, the accused refused to take her back. When the complainant went to the elder sister of the accused and informed about the accused, for that the sister of the accused filed a false complaint against the wife/defacto-complainant and FIR was registered against her.

9. It is further alleged that due to the harassment made by the accused-husband, she has filed a petition under the DV Act, where interim order is also passed and she was permitted to reside in the matrimonial home at Mysore. But, the accused did not allow her to reside in the house. Hence, she has filed application before the Magistrate to break open the door and reside in the matrimonial home. But, the accused did not provide the wife/defacto-complainant access to the bathroom situated inside the house. The accused also filed petition for quashing the criminal proceedings under the DV Act as well as complaint filed by her before the police. Therefore, she was constrained to file a petition for canceling the bail granted to the accused-husband.

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10. Crl.P.No.13275/2023 is filed by the husband for quashing the DV proceedings in Crl.Misc.No.156/2023

wherein the wife/defacto-complainant filed the application u/s 12 of the DV act, before the MMTC-1 contending that the accused/husband is committing domestic violence in the nature of physical, economic, verbal and psychological abuse. After the marriage dated 10.12.2021, she has narrated the love affairs between them. Accused-husband refused to marry her, thereafter filing the complaint and releasing on bail, he married the complainant and later started avoiding the complainant and sent her out of the house and failed to take her back and not allowing her in matrimonial house. On various contentions taken by her in the petition, she is seeking for monitory relief of Rs.50,000/- per month as maintenance, damages and Rs.50 lakhs towards fraud caused by the accused/husband. Being aggrieved by the petition filed by her, the husband is before this Court seeking for quashment of the proceedings under the DV act.

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11. Learned senior counsel for the petitioner/husband has seriously contended that the petitioner is innocent of the alleged offences. The allegation is that he has cheated the respondent No.2 after they had a lover affair and made false promise of marriage. But, in view of accused

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marrying the respondent No.2, the question of cheating
does not arises. Therefore, once the marriage has
performed, the false promise of marriage does not arise.
Therefore, the criminal proceedings against the petitioner
shall be quashed.

12. Learned counsel for the petitioner has also
contended in DV Act case that she has suppressed the
petition filed for restitution of conjugal rights. Hence, the
proceeding before the Magistrate under Section 12 of the
DV Act is illegal. In the DV proceedings, the ex-parte order
has been passed, permitting the respondent to reside in
the house of the accused. Such an order can be passed
under Section 17 of the DV Act. The respondent has

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misused the provisions of law. The marriage to be
successful, a certain dimension of trust should exist and
be maintained between husband and wife. There is a lack
of trust, existing in the marriage of the petitioner with
respondent No.2. The restitution of conjugal rights has
been filed to live with the petitioner, but, she is not
coming to the house and she is attempting to harass the
petitioner, by filing the petition. Absolutely, there is no
case made out against the petitioner. Hence, prayed for
quashing the DV proceedings before the Magistrate.

13. Per contra, learned counsel for the respondent No.2 has objected the petition, contending that the accused/husband has cheated the wife/defacto-complainant with the false promise of marriage. He has sexually assaulted her and hence, the complaint came to be filed. He had undertaken to marry the respondent No.2 and came out on bail and married the respondent No.2. But, subsequently, started harassing the respondent No.2, for withdrawing the complaint and when, she refused to

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withdraw the complaint, he has harassed her and thrown out from the house. Therefore, she has approached the Magistrate under the D.V. Act, and also obtained the order for shared house. Therefore, it is contended that the accused violated the conditions of the bail. Hence, bail should be cancelled and he should be tried for the complaint filed by the respondent. Hence, prayed for dismissing the petition filed by the accused and allowing the petition filed by her for canceling the bail.

14. Having heard the arguments and perused the records, the point that arises for my consideration are:-

- i. Whether the petition filed by the accused/husband under Section 482 of Cr.P.C. can be allowed, in

view of the petitioner having married the respondent?

- ii. Whether respondent wife/defacto-complainant made out sufficient ground to cancel the bail granted by this Court?

- iii. Whether the petitioner/husband is entitled for relief for quashing the

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proceedings under the D.V. Act.
filed by the respondent/wife?

15. Learned counsel for the accused/husband has contended that the complaint came to be filed by the wife/defacto-complainant alleging that he has cheated her by sexually assaulting her under the false promise of marriage. It is contended that hence, the accused has already married respondent No.2, the question of cheating does not arise. Therefore, the criminal proceedings arising out of Crime No. 246/2021 shall be quashed. The same is objected by the wife/defacto-complainant, mainly on the ground, the charge sheet is field for 354, 504 and 506 of IPC. Even though the accused married the wife/defacto-complainant No.2, the offence was being committed continuously from the year 2005, till 26.06.2021. Hence, he cannot be exonerated and even otherwise, the accused after the marriage once again has reverted back and left the company of the wife/defacto-complainant and thrown her out of the house. By considering the facts and

circumstances of the case, of course, the allegation against the accused/husband was that he has cheated the complainant without marrying her. He is said to be outraged her modesty and had sexual intercourse with her and after registering the FIR and filing the charge sheet, he was arrested by the police and while considering the bail, the accused has stated that he is ready to marry the respondent. Accordingly, an interim bail was granted and he has married the respondent No.2 and the bail was made absolute. But, the criminal proceedings will not evaporate automatically, the offence once committed will not be exonerated, subsequently after filing charge sheet. It is nothing but, once the complaint of theft is made and if the stolen property was recovered from the accused, he cannot be exempted from criminal prosecution automatically. Therefore, once at the time of complaint, there was offence already committed by the accused and subsequently, even though he married the complainant, until the wife/defacto-complainant comes before the Court and withdraws the complaint by submitting no objection

Smt Asfia Hussaini vs State Of Karnataka on 20 August, 2024
for quashing the complaint, the complaint and criminal
proceedings will not be exonerated automatically.

16. That apart, the accused married her only for the purpose of getting bail. Subsequently, he has thrown out the complainant from the house and she was forced to approach the Magistrate for the shared house and seeking compensation. Therefore, I am of the view that the criminal proceedings initiated against the petitioner in Crime No.246/2021 cannot be quashed.

Therefore,

answer to point No.1 is in negative.

17. As regards to the cancellation of bail, Crl.P.No.2333/2024 filed by the wife/defacto-complainant against the accused/husband on the ground of violation of the conditions. Of course, the respondent No.2 has already married the accused, as per the undertaking given before the Court. Therefore, once he has married the wife/defacto-complainant and complied the order, there is no violation of bail order or condition in order to cancel the

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bail. Absolutely, there is no ground made out for cancellation of the bail. Even otherwise, the offence is not punishable with death or imprisonment of life and the offence is triable by Magistrate. Therefore, the petitioner

has not made out the case for cancellation of bail. Hence,
Point No.2 is answered in negative.

18. As regards point No.3, to the quashing the order passed by the Magistrate under the DV Act, where it is stated there is ex-parte order passed by the Magistrate for shared house. Hence, prayed for quashing the same. By looking into the facts and circumstances of the case and dispute between the both of them, prior to the marriage and after the marriage, this Court not be inclined to quash the proceedings initiated by the wife under the DV Act.

19. Accused/husband should approach the same Court for recalling the order or else he can file appeal under Section 29 of the DV Act, before the Magistrate and at this stage, this Court cannot quash the criminal

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proceedings in the D.V.Act. Hence, answer to point No.3 is in negative.

20. Accordingly, the following order:

ORDER

I. Crl.P.No.10377/2023 filed under Section 482 of Cr.P.C. for quashing the Criminal proceedings in CC No.56243/2021 pending on the file of the X ACMM, Bangalore is hereby dismissed.

II. Crl.P.No.2233/2024 filed by the wife/defacto-

complainant under Section 439(2) of Cr.P.C. for cancellation of bail granted to accused/husband is hereby dismissed.

III. Cr.P.No.13275/2023 filed by the petitioner/husband for quashing the criminal proceedings on the file of the Metropolitan Magistrate Traffic Court-1 (MMTC-1), Bangalore in Crl.Misc.No.156/2023 under the DV Act is hereby dismissed.

Sd/-

(K.NATARAJAN) JUDGE NJ

Smt. B. Prameela vs Sri.S. Krishna on 4 July, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:25325
CRL.P No. 9198 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JULY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 9198 OF 2023
BETWEEN:

1. SMT. B.PRAMEELA
W/O S.KRISHNA
D/O BORALINGAIAH
AGED ABOUT 37 YEARS

2. VIHA K.,
D/O S.KRISHNA
AGED ABOUT 9 YEARS
REPRESENTED BY
NATURAL GUARDIAN MOTHER
SMT. B.PRAMEELA

BOTH R/AT NO 805
3RD MAIN ROAD, 3RD CROSS
BEHIND GOVERNMENT COLLEGE

Digitally signed
by NAGAVENI
Location: HIGH
COURT OF
KARNATAKA

SRS ROAD, PEENYA
BENGALURU NORTH
PEENYA SMALL INDUSTRIES
BENGALURU - 560 058.

...PETITIONERS
(BY SRI. R.P.SOMASHEKHARAIAH, ADVOCATE)

AND:

1. SRI. S.KRISHNA
S/O LATE SHIVARAMAIAH
AGED ABOUT 42 YEARS
R/AT NO.805, 3RD MAIN ROAD

3RD CROSS, BEHIND GOVERNMENT COLLEGE
SRS ROAD, PEENYA
BENGALURU NORTH
PEENYA SMALL INDUSTRIES
BENGALURU - 560 058.

2. SMT. S.LAKSHMIDEVI
D/O LATE SHIVARAMAIAH
W/O RAJANNA
AGED ABOUT 46 YEARS
R/AT NO.822, 3RD MAIN ROAD
3RD CROSS, BEHIND GOVERNMENT COLLEGE
SRS ROAD, PEENYA
BENGALURU NORTH
PEENYA SMALL INDUSTRIES
BENGALURU - 560 058.
3. SMT S.VIDYA
D/O LATE SHIVARAMAIAH
W/O VISHWANATH GOWDA S. C.,
AGED ABOUT 40 YEARS
R/AT NO.40/12-6, 22ND CROSS
GOVINDARAJNAGAR, VIJAYANAGAR
BENGALURU NORTH
BENGALURU - 560 040.
4. SRI. S.SHYAMASUNDAR
S/O LATE SHIVARAMAIAH
AGED ABOUT 43 YEARS
R/AT NO.805, 3RD MAIN ROAD
3RD CROSS, BEHIND GOVERNMENT COLLEGE
SRS ROAD, PEENYA
BENGALURU NORTH
PEENYA SMALL INDUSTRIES
BENGALURU - 560 058.

...RESPONDENTS

(BY SRI. B.K.CHANDAN, ADVOCATE FOR R2 TO R4)

THIS CRL.P IS FILED U/S 482 OF THE CR.P.C., PRAYING
TO 1.SET ASIDE AND MODIFY THE ORDER DATED 29.12.2022

MADE ON APPLICATION UNDER SEC.23(2) OF THE PWDV ACT
MADE IN CRL.MISC.NO.93/2022 ON THE FILE OF MMTC- III
BENGALURU.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are before this Court calling in question an order dated 29.12.2022, passed by the Metropolitan Magistrate, Traffic Court - III, Bengaluru, on an application filed by the petitioners under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005, in Crl.Misc.No.93/2022, partly allowing the said application.

2. Heard Sri R.P.Somashekharaiyah, learned counsel for petitioners and Sri B.K.Chandan, learned counsel for respondent Nos.2 to 4.

3. The issue in the lis need not detain this Court for long or delve deep into the matter, as this Court has dealt with an identical issue of maintainability of this petition, which calls in question the order on an application filed under Section 23(2) of the Act of the concerned Court, as the petitioners have an NC: 2024:KHC:25325 alternative, efficacious and statutory remedy available before the Sessions Court under Section 29 of the Act, as is held in Crl.P.No.3578/2022 in the case of A.RAMESH BABU vs. DHARANI S., disposed on 28.06.2024. It is held as follows:

"10. A Full Bench of the High Court of Bombay, in the case of NANDKISHOR PRALHAD VYAWAHARE v. MANGALA¹ in which the issue was whether the High Court can exercise the power under Section 482 of the Cr.P.C. in respect of proceedings under the Act, answers it after considering the entire spectrum of the Act and the precedents then obtaining as follows:

"....

42. We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Criminal Procedure Code to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under section 482 of Criminal Procedure Code is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Criminal Procedure Code by the Parliament as provided under section 28 of the D.V. Act? In other words - Would the nature of the proceedings decide the fate of section 28 or the intention of the Parliament as expressed in section 28 of the D.V. Act would? To find out an answer, as a first step, we must look into the express language of the provision of section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

...

2018 SCC OnLine Bom.923

NC: 2024:KHC:25325

50. Coming to the second part of section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of the provisions of Criminal Procedure Code. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Criminal Procedure Code to all the proceedings under the D.V. Act, as laid down in section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under section 28(2) exists for speedy and effective disposal of an application under section 12 or under sub- section (2) of section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub-section (2) of section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under section 12 or section 23(2) and comes to an end the moment the proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so as to exclude the applicability of the provisions of Criminal Procedure Code, forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, remedy of criminal revision under section 397 or invocation of High Court's inherent power under NC: 2024:KHC:25325 section 482 of Criminal Procedure Code, we would be doing violence to the language of entire provision of section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51. The purpose of the power given to the Court under section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and

speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with section 12 D.V. Act application in a given case and especially the Courts contemplated under section 26 of the D.V. Act before whom similar applications are filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

52. If the concept of limited applicability of the provisions of the Criminal Procedure Code, as propounded by Shri C.A. Joshi, learned Counsel for the respondent is accepted; in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise its own procedure in a particular case so as to suit the exigencies of that case. We may add here that language used in NC: 2024:KHC:25325 section 28(2) is significant and needs to be taken into account. The freedom to lay down "own procedure" is confined to only a particular proceeding either under section 12 or section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words "for disposal of an application under section 12, sub-section (2) of section 23" after the words "nothing in sub-section (1) shall prevent the Court from laying down its own procedure".

53. This would mean that generally the provisions of Criminal Procedure Code would be applicable, to all proceedings taken under sections 12 to 23 and also in respect of the offence under section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Criminal Procedure Code to the proceedings referred to in section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the section, which would have its last word. We have already held that section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under section 482 of Criminal Procedure Code, subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and also in respect of the offence under section 31 of the D.V. Act.

54. We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (supra), wherein it is observed that a proposition that because the proceedings are of civil nature, the Criminal Procedure Code may not apply, is too NC: 2024:KHC:25325 general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Criminal Procedure Code to the proceedings under the Act (Paragraph 16). It also held that the remedy under section 482 of Criminal Procedure Code would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under:

"19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under section 29 before the Court of Session or revision under section 397, the Court may decline entertainment of the petition under section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under section 482 of the Code."

55. At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunaparedy (supra) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are predominantly of civil nature, the proceedings were to be governed by Criminal Procedure Code as provided under section 28 of the D.V. Act. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under section 18 and monetary relief under section 20 would be governed by the provisions of Criminal Procedure Code in terms of section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding. If these observations apply to a proceeding taken for obtaining reliefs under sections 18 and 20 of NC: 2024:KHC:25325 the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56. In the case of Sukumar Gandhi (supra), the Division Bench of this Court, however, held that because the proceedings under section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to section 482 of Criminal Procedure Code could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under section 482 of Criminal Procedure Code could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite

to what has been thought of by it. That apart, making section 482 of Criminal Procedure Code as not applicable may also amount to doing harm to plain and clear language of section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

57. While there is no difference of opinion about what the intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of section 482 to the proceedings under section 12(1) of the D.V. Act and it is achieved by

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NC: 2024:KHC:25325 removing its applicability. The issue can be examined from a different angle as well.

58. A plain reading of section 482 of Criminal Procedure Code, which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person- woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under section 12 of the D.V. Act. If this power is removed from section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

59. Now, one incidental question would arise as to from what stage the provisions of the Criminal Procedure Code would become applicable and in our view, the answer could be found out from the provisions of sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under section 28 of the D.V. Act, subject to the exceptions provided in the

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NC: 2024:KHC:25325 Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of section 28, the provisions of the Criminal Procedure Code shall govern the proceedings under sections 12 to 23 and also those relating to an offence under section 31 of the D.V. Act on their commencement."

(Emphasis supplied) The Full Bench considers at what point in time or at what stage the Cr.P.C. would become applicable and holds that it is only where an order is passed.

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SUMMARY OF THE FINDINGS:

(i) A petition under Section 482 of the Cr.P.C. calling in question the entire proceedings before the concerned Court initiated under the Protection of Women from Domestic Violence Act, 2005 would be maintainable, only if the proceedings are challenged on the ground of abuse of the process of the law, as the Court of Session is not empowered to obliterate the proceedings holding it to be an abuse of the process of the law.

(ii) Any specific order passed by the concerned Court answering applications filed under Sections 18, 19, 20 or 22 of the Act or any other interlocutory order would not be entertainable before this Court in its

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NC: 2024:KHC:25325 jurisdiction under Section 482 of the Cr.P.C. The aggrieved, by any order, has to prefer an appeal under Section 29 of the Act, as it is an alternative and statutory remedy available.

(iii) Finding the entire process initiated by the respondent against the present petitioners, the father-in-law and mother-in-law, to be an abuse of the process of the law, those proceedings are to be obliterated."

(Emphasis supplied) In the light of the facts obtaining in the case at hand and the afore-quoted judgment of this Court, which covers the issue on all its fours, this Court would not entertain this petition.

Therefore, keeping open all the contentions of both the parties, to be urged before the Court of Sessions, the criminal petition stands disposed.

Sd/-

JUDGE NVJ CT:SS

Smt. Nandana K vs Sri. Manoj V on 16 July, 2024

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NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2024

BEFORE
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 14568 OF 2024 (GM-FC)
C/W
WRIT PETITION NO. 10177 OF 2024 (GM-FC)

IN W.P.No.14568/2024

BETWEEN:

MR. MANOJ V,
S/O VENKATA REDDY C.R.,
AGED ABOUT 33 YEARS,
RESIDING AT NO.46/D,
1ST FLOOR, 8TH CROSS,
6TH MAIN, KENGERI SATELLITE TOWN,
BENGALURU - 560 060.

Digitally ...PETITIONER
signed by (BY SRI. RAJESH P., ADVOCATE)
SUVARNA T

Location: AND:

HIGH
COURT OF
KARNATAKA MRS. NANDANA K,
D/O KRISHNA REDDY,
AGED ABOUT 29 YEARS,
RESIDING AT NO.4, 8TH CROSS,
NEAR MATHRUSHREE SCHOOL,
CHAMUNDESHWARI NAGAR,
LAGGARE, BENGALURU - 560 058.

... RESPONDENT

(BY SRI.K.P.BHUVAN, ADVOCATE)

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NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ALLOW THE INSTANT PETITION AND SET ASIDE THE INTERIM ORDER DATED 04.03.2024 IN INTERIM APPLICATION NO.3 PASSED BY THE HONOURABLE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT AT BENGALURU IN MC NO.6198 OF 2022 VIDE ANNEX-A IN ACCORDANCE WITH LAW AND ETC.,

IN W.P.No.10177/2024

BETWEEN:

SMT. NANDANA K,
W/O MANOJ V.,
D/O KRISHNA REDDY,
AGED ABOUT 28 YEARS,
RESIDING AT NO.4, 8TH CROSS,
NEAR MATHRUSHREE SCHOOL,
CHAMUNDESHWARI NAGAR,
LAGGARE, BENGALURU - 560 058.

...PETITIONER

(BY SRI. K.P.BHUVAN., ADVOCATE)

AND:

SRI. MANOJ V,
S/O VENKATA REDDY C.R.,
AGED ABOUT 31 YEARS,
RESIDING AT NO.46/D,
1ST FLOOR, 8TH CROSS,
6TH MAIN, KENGERI SATELLITE TOWN,
BENGALURU - 560 060.

...RESPONDENT

(BY SRI. RAJESH PANDIAN, ADVOCATE FOR C/R)

-3-

NC: 2024:KHC:27828
WP No. 14568 of 2024
C/W WP No. 10177 of 2024

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 04.03.2024 PASSED BY THE II ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU IN MC NO.6198/2022 ON IA NO.3 VIDE ANNEXURE - K BY ALLOWING THE APPLICATION OF THE PETITIONER VIDE ANNEXURE - F.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,

THE COURT MADE THE FOLLOWING:

COMMON ORDER

Aggrieved by the order dated 04.03.2024 passed on IA No.3 in M.C.No.6198/2022, whereby the Court below had granted interim maintenance of Rs.8,000/- per month, both the husband and the wife are before this Court.

2. The writ petition filed by the husband is numbered as W.P.No.14568/2024 and the writ petition filed by the wife is numbered as W.P.No.10177/2024. As such, both these writ petitions are taken up together for disposal by way of common order.

3. The parties are referred to as husband and wife for the sake of convenience.

NC: 2024:KHC:27828

4. The wife has filed an application seeking interim maintenance of Rs.1,25,000/- per month, litigation expenses of Rs.25,000/- and Rs.3,00,000/- towards medical expenses by the husband. It is the case of the wife that the marriage was solemnized on 12.05.2022. As the husband deserted her, she filed a petition for restitution of conjugal right and the husband by way of a counter claim, had sought for divorce. The wife on 23.09.2023 has filed an application i.e., IA No.3 seeking maintenance.

5. It is the case of the husband that she is not entitled for maintenance as she is gainfully employed and she has filed false statement of assets and liabilities. It is stated that she has voluntarily left the matrimonial house. She is not suffering from any diseases. She has not produced any materials to show that she has spent Rs.3,00,000/- for medical treatment. She was admitted to hospital as she was attempted to commit suicide.

6. Having heard the learned counsel for the parties and taking into consideration the documents that are placed before it, the Court below has observed that the affidavit of NC: 2024:KHC:27828 assets and liabilities filed by the wife discloses that she is a B.E. Graduate, working as SAP Consultant at Capgemini Technology Services and earning net salary of Rs.58,272/-. She had borrowed an amount of Rs.6,25,000/- from HDFC bank and Rs.6,60,000/- from Yeshwanthpur Co-operative Society and she has to pay the EMI.

7. The affidavit of assets and liabilities filed by the respondent discloses that he has to maintain his parents and his salary is Rs.2,27,321/- per month and has borrowed construction loan from SBI as well as Solar Panels loan from private finance. He has been paying EMI of Rs.1,70,300/- towards housing loan and Rs.45,041/- towards Solar Panel loan. The Court also observed that the wife has sought for medical expenditure of Rs.3,00,000/- from the respondent and it is her burden to prove that she has spent that amount towards medical expenses and the Court has felt that at this stage, it is not proper to direct the respondent to pay the alleged medical expenses. Accordingly, the Court held that as the income of the husband is more than the earnings of the wife, it is the duty of the husband to provide maintenance to his legally wedded wife in accordance with his financial status NC: 2024:KHC:27828 and thereby, granted Rs.8,000/- per month to the wife as maintenance and

litigation expenses of Rs.10,000/- . Questioning the quantum of maintenance and seeking enhancement of the maintenance, both the husband and the wife are before this Court.

8. Learned counsel appearing for the husband has pointed out that the party who has come before the Court with suppression and misrepresentation of fact is not entitled for any relief from the Court. He submits that though the application seeking maintenance is filed on 23.09.2023, the bank statements of the wife are filed only from April 2021 till February 2023. She has failed to submit the bank statements from February 2023 to 23.09.2023. He further submits that for performing their marriage, she said to have borrowed loan of Rs.58,272/-, but no documents were placed before the Court. It is submitted that as of now, her salary is Rs.78,000/- per month and the said fact was not stated even before this Court when the present writ petition was filed in the year 2024. He submits that in the statement of assets and liabilities, it is stated that her liability is Rs.1,25,000/- per month, whereas in the writ petition filed by her, in the pleadings at para No.21, it NC: 2024:KHC:27828 is stated that the liability is Rs.67,000/- per month. Even this statement also runs contrary. Further, at the time of filing the petition, she has stated that she is earning an amount of Rs.58,272/- per month. Now the salary would be hiked and she is presently drawing salary of Rs.78,000/- per month. It is submitted that she has also in her expenditure had shown Rs.25,000/- to be spent to her parents. It is submitted that the husband need not provide maintenance to her parents. It is further submitted that the marriage had taken place on 12.05.2022 and she stayed with her husband till 07.08.2022 and later, she left the matrimonial house. He submits that when she is capable of earning which is evident from the documents produced by her, she is not entitled for any maintenance.

9. Learned counsel has placed reliance on the judgment of the Delhi High Court, arising out of MAT.APP.(F.C.)248/2019 and CM Appl.20720/2022, wherein the Court has observed that the appellant is highly qualified and has an earning capacity, but in fact, though she has been earning, she is not inclined to truthfully disclose her true income. Such a person cannot be held entitled to maintenance.

NC: 2024:KHC:27828 Accordingly, the claim for maintenance by the appellant therein under the provisions of Protection of Women against Domestic Violence Act has been declined. Accordingly, the said appeal came to be dismissed. Basing on that, learned counsel appearing for the husband submits that the petition is liable to be dismissed and the wife is not entitled for any maintenance.

10. Learned counsel for the wife submits that the husband has also suppressed his income. Now he is earning Rs.2,97,000/- per month and that aspect was not disclosed before this Court. The solar loan has been cleared, but the same has been mentioned in this petition as due. It is submitted that the husband has come before this Court with suppression of facts. Considering the fact that she has to pay the EMI and other loans, the wife is entitled for the amount claimed by her. But the Court below without any basis, had granted an amount of Rs.8,000/- as monthly maintenance, which needs to be enhanced.

11. Having heard the learned counsel appearing for the parties and also perused the materials on record.

NC: 2024:KHC:27828

12. The parties who are claiming the relief before the Court should approach the Court with clean hands and any suppression from any of them, will have its consequences. The Hon'ble Apex Court in Rajnesh Vs. Neha & Another¹ has dealt with this aspect. When the parties have filed statement of assets and liabilities and if any of the statements that are filed before the Court are proved to be false, then, the Court can initiate appropriate proceedings against the parties.

13. From the pleadings that are placed before the Court prima-facie it appears that, there is suppression of facts from both the parties. In that view of the matter, the impugned order dated 04.03.2024 passed on IA No.3 in MC No.6198/2022 by the learned II Additional Principal Judge, Family Court at Bengaluru, is set aside and the family Court below shall consider all these contentions raised on behalf of both the parties. The wife shall also file her statement of accounts right from the date of the petition till this date, including the IT returns as contemplated as per the judgment of the Hon'ble Apex Court in Rajnesh's case and based on that, the Court below shall pass appropriate order, and if any AIR 2021 SC 569

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NC: 2024:KHC:27828 suppression on behalf of either of the parties, then, the Court shall initiate appropriate action.

Registry is directed to send the entire record to the Court below to enable the Court to re-appreciate the matter in a better way. The application IA No.3 shall be disposed of within two months from the date of receipt of copy of this order.

Accordingly, writ petitions stand disposed off. All IA's, in the writ petitions stand disposed off.

SD/-

JUDGE PN

Shri. Arunkumar S/O Kallappa Kotambari vs State Of Karnataka on 19 March, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC-D:5
CRL.P No. 101857

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 101857 OF 2023

BETWEEN:

1. SHRI. ARUNKUMAR
S/O. KALLAPPA KOTAMBARI,
AGE. 34 YEARS,
OCC. WARDEN AT HINDALGA JAIL,
BELAGAVI,
R/O. CENTRAL PRISON,
HINDALGA, BELAGAVI-591108,
TQ & DIST. BELAGAVI.
2. SHRI. ANANDKUMAR
S/O KALLAPPA KOTAMBARI,
AGE. 35 YEARS, OCC. ASSISTANT TEACHER,
GOVERNMENT HIGH SCHOOL, BIJJAHALLI,
R/O. BIJJAHALLI, TQ. KANAKAPURA,
DIST. RAMANAGARA, PIN CODE-562119.
3. SOU. SHIVAGANGA

Digitally signed
by
VIJAYALAKSHMI
M KANKUPPI

Location: HIGH

W/O. KALLAPPA KOTAMBARI,

VIJAYALAKSHMI COURT OF
M KANKUPPI KARNATAKA
DHARWAD
BENCH

AGE. 59 YEARS, OCC. HOUSEWIFE,

Date:
2024.03.23
13:23:10 +0530

R/O. KALLATI GALLI, AT. TERDAL,
JAMKHANDI, DIST. BAGALKOT-587315.

4. SHRI. KALLAPPA
S/O CHANNAPPA KOTAMABARI,
AGE. 63 YEARS,
OCC. RETIRED SCHOOL TEACHER,
R/O. KALLATI GALLI, AT. TERDAL,
JAMKHANDI, DIST. BAGALKOT-587315.
5. MISS. GEETA
D/O KALLAPPA KOTAMBARI,
AGE. 37 YEARS,
OCC. PRIVATE SCHOOL TEACHER,

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NC: 2024:KHC-D:5479
CRL.P No. 101857 of 2023

R/O. GURUBRAHMANANDNAGAR,
NEXT TO JADI GODOWN, AT. TERDAL,
JAMKHANDI, DIST. BAGALKOT-587315.

... PETITIONERS

(BY SRI. DIWAKAR G. BHAT, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
R/BY STATION INCHARGE,
WOMEN POLICE STATION,
BELAGAVI CITY, BELAGAVI-590001,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD-590011.
2. SOU. VIJAYALAXMI
W/O. ARUNKUMAR KOTAMBARI,
EARLIER TO MARRIAGE KNOW AS
VIJAYLAXMI D/O BHIMAPPA GARADE,
AGE. 31 YEARS,
OCC. WARDEN IN HINDALAGA JAIL,
R/O. C/O. ESHWAR GAVADE, 1ST FLOOR,

MANJEREKAR COLONY, HINDALAGA
TQ & DIST. BELAGAVI, KARNATAKA-591108.

... RESPONDENTS

(BY SRI. PRAVEEN K. UPPAR, AGA FOR R1;
SRI. PRASHANT F. GOUDAR, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
SEEKING TO QUASH ALL THE PROCEEDINGS, INCLUDING THE
COMPLAINT, FIR AND THE CHARGE SHEET IN CRIMINAL CASE
NIO.718/2023 (BELAGAVI CITY WOMEN POLICE STATION AT CRIME
NO.03/2023), IN RESPECT OF THE OFFENCE PUNISHABLE UNDER
SECTION 498(A), 323, 354, 504, 506 R/W 34 OF THE IPC PENDING
BEFORE THE LEARNED II J.M.F.C. COURT, BELAGAVI IN
SO FAR AS THE PETITIONERS 1 TO 5/ACCUSED 1 TO 5 ARE
CONCERNED.

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NC: 2024:KHC-D:5479
CRL.P No. 101857 of 2023

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The petition is filed by the accused Nos.1 to 5 praying to quash all proceedings including complaint, FIR and charge sheet in C.C.No.718/2023 pending on the file of II JMFC., Court Belagavi registered for the offences punishable under Section 498(A), 323, 354, 504, 506 r/w 34 of IPC.

2. Heard learned counsel for petitioners and learned AGA for respondent No.1-State and learned counsel for respondent No.2.

3. A case came to be registered on first information filed by respondent No.2 in Crime No.3/2023 of Belagavi City Women Police Station for the offence punishable under Sections 498(A), 323, 354, 504, 506 r/w 34 of IPC. The police after investigation filed charge sheet against the petitioners for offences punishable under Section 498(A), 323, 354, 504, 506 R/W 34 IPC. On the basis of the said charge sheet, learned Magistrate has taken cognizance and registered a case in CC No.718/2023. The proceedings of the NC: 2024:KHC-D:5479 said criminal case are prayed to be quashed in the present case.

4. The learned counsel for petitioners contended that the marriage between the petitioner No.1 and respondent No.2 was performed in the presence of elders on 20.08.2021 at Belagavi. Immediately after some months of marriage, the petitioner No.1 had filed a petition seeking divorce in FR.MC No.148/2022 dated 20.04.2022 and the same came to be rejected as premature by order dated 20.04.2022 and thereafter, he filed a divorce petition in MC No.432/2022 on 17.09.2022 and it is pending on the file of Family Court, Belagavi. He submits that on perusal of the averments made in

the said divorce petitions, there is no coordination and cooperation between the husband and wife and the respondent No.2 is a quarrelsome lady. Therefore, husband has sought divorce on the ground of cruelty.

5. Learned counsel for the petitioners further submits that conciliation has been held and report has been submitted stating that conciliation failed, it contains that both husband and wife stayed together only for two to three days and their NC: 2024:KHC-D:5479 marriage is consummated. He contends that earlier on two occasions respondent No.2 has approached the Police to secure her husband for enquiry as there were some small quarrels/disputes between herself and her husband. The respondent No.2 has made a representation to the superior officer of petitioner No.1, requesting not to consider the transfer of petitioner No.1 as he may marry another lady in the transferred place. The respondent No.2 has initiated proceedings under Protection of Women from Domestic Violence Act and there is a Domestic Violence report enclosed to the said petition wherein she has stated that she is ready to join her husband. He contends that there is no specific date of alleged incident is mentioned in the complaint. Respondent No.2 is residing in her parents' house since December-2021 and alleged complaint is filed on 07.01.2023. The only allegation of respondent No.2 in the complaint is that even though she is ready to join her husband, he has not taken her and he has married another lady. He contends that there is a delay of more than one year in filing the complaint. Respondent No.2 is divorced NC: 2024:KHC-D:5479 lady working as a warden in the District Prison, Belagavi. Complaint has been filed only on the ground that the husband refused to join her when she requested him and he refused to take her to his house. He contends that complaint and proceedings are abuse of process of law and pray to quash the proceedings.

6. Counsel for respondent No.2 contends that there are specific allegations against each of the petitioners of them harassing mentally and physically the respondent No.2. Earlier respondent No.2 has approached the police on two occasions. The averments of the complaint and the statement of relatives of the respondent No.2 will make out prima facie case against the petitioners for the offences alleged against them. He contends that there are no grounds for quashing the proceedings.

7. Learned HCGP would contend that the respondent No.2 was divorcee and at the insistence of petitioner No.1 she agreed to marry him and immediately after some months quarrels started between them and police tried to collect the NC: 2024:KHC-D:5479 material of second marriage of the petitioner No.1 and same is in progress.

8. Learned counsel for respondent No.2 contends that the alleged second marriage of petitioner No.1 amounts to cruelty.

9. Respondent No.2 was a divorcee; respondent No.2 and petitioner No.1 were working as wardens in District prison, Belagavi. Marriage of petitioner No.1 and respondent No.2 was performed in the presence of elders on 20.08.2021 at Belagavi. The respondent No.2 after marriage stayed for some days in the house of petitioner Nos.1 to 4 and thereafter, started residing along with her husband in rented house at Belagavi. The petitioner No.1 on 22.03.2022 filed a petition seeking divorce against respondent No.2 which is registered in FR M.C. No.148/2022 which came to be dismissed as premature on 20.04.2022. Even as per averments of the complaint, the respondent No.2 since

December-2021 residing with her parents. Petitioner No.1 again filed another petition seeking divorce in MC No.432/2022 on 17.09.2022 and till now it is pending on the NC: 2024:KHC-D:5479 file of Family Court, Belagavi. The conciliation held in the said proceedings failed. In the said conciliation report, it is stated that petitioner No.1 is not ready to take respondent No.2 to his house, but, respondent No.2 is ready to join the petitioner No.1, if he takes her back.

10. The respondent No.2 has approached the police as there were some small disputes between herself and her husband two times i.e. on 29.01.2022 and 28.03.2022. In the said acknowledgments, there is no any averment of harassment by the petitioner Nos.2 to 5. The respondent No.2 has also sent a letter to the official superiors of the petitioner No.1 not to transfer him as he may marry another lady. The respondent No.2 also initiated proceedings against the petitioners under the provisions of Protection of Women from Domestic Violence Act, 2005 and it is pending in Crl.Misc.No.194/2022 on the file of II JMFC., Belagavi. The Domestic Violence report is enclosed with the said petition wherein also respondent No.2 indicated that she is ready to join the matrimonial house. In the said Domestic Violence report, it is stated that the petitioner Nos.2 to 5 often used NC: 2024:KHC-D:5479 to visit her house at Hindalaga and tortured her. Respondent No.2 stayed with the petitioner No.1 at Belagavi till December-2021 and thereafter she is residing in her parents' house.

11. There is no averment in the complaint that petitioner Nos. 2 to 5 are visiting the house of her parents. The allegation against the petitioner Nos.2 to 5 of harassing respondent No.2 is when she stayed in the house of her husband immediately after marriage. The alleged dates of harassment have not specifically stated in the averments of the complaint. The respondent No.2 filed complaint stating that on 23.12.2022 and 28.12.2022 petitioner No.1- her husband refused to join her to lead marital life and cheated her. The said averments of the complaint are reiterated by the other witnesses who are parents and other relatives of respondent No.2. There is no specific date of alleged incident in the statement of other charge sheet witnesses.

12. The respondent No.2 is an educated lady working as a warden in District prison, Belagavi. The alleged harassment by the petitioners is prior to December-2021. There is a

- 10 -

NC: 2024:KHC-D:5479 delay in filing the complaint. It appears that the complaint came to be filed only on the ground that petitioner No.1 married another lady and cheated her. On perusal of the entire charge sheet material and documents produced i.e. divorce petition, conciliation report, Domestic Violence report and proceedings in criminal case, the filing of the complaint by respondent No.2 against the petitioner is an afterthought and only to teach lesson and therefore, it is abuse of process of law.

13. In view of the above, proceedings against petitioners requires to be quashed. Accordingly, the following:

Shri. Arunkumar S/O Kallappa Kotambari vs State Of Karnataka on 19 March, 2024

ORDER Petition is allowed. Proceedings against the petitioners in C.C. No.718/2023 (Belagavi City Women Police station at Crime No.03/2023) pending on the file of II JMFC. Court, Belagavi are hereby quashed.

Sd/-

JUDGE HMB CT:BCK

Sri. K. K. Appainah (Manju) vs Smt. Teena. C. N on 15 March, 2024

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NC: 2024:KHC:10742-DB
MFA No. 255 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2024

PRESENT
THE HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA
MFA NO. 255 OF 2023 (MC)

BETWEEN:

SRI. K. K. APPAINAH (MANJU)
S/O K A KUTTAPPA
AGED ABOUT 39 YEARS
R/AT THADACHIKAD ESTATE
AITHUR VILLAGE AND POST
VIRAJPET TALUK KODAGU DIST - 571 215 . . . APPELLANT

(BY SRI. S.V. SURYAVANSHI, ADV. FOR
SRI. SACHIN B S., ADV.)

AND:

SMT. TEENA. C. N.
D/O NANJAPPA (GANESH)
W/O K K APPAI
TEENA COTTAGE NANGALA

Digitally
signed by K S VILLAGE AND POST
RENUKAMBA VIRAJPET TALUK
Location: KODAGU DISTRICT - 571 215 . . . RESPONDENT
High Court of Karnataka
(SERVED AND UNREPRESENTED)

THIS MFA IS FILED UNDER SECTION 28(1) OF HINDU
MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE
DT.09.09.2022 PASSED IN MC NO.27/2015 ON THE FILE OF
THE SENIOR CIVIL JUDGE, VIRAJPET, ALLOWING THE
PETITION FILED UNDER SECTION 13(1)(ia) OF HINDU
MARRIAGE ACT, FOR DISSOLUTION OF MARRIAGE WITH
COST.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
K.S.MUDAGAL J., DELIVERED THE FOLLOWING:

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NC: 2024:KHC:10742-DB
MFA No. 255 of 2023

JUDGMENT

Heard.

2. Challenging the award of permanent alimony of Rs.10,00,000/- to the respondent in M.C.No.27/2015 on the file of Senior Civil Judge, Virajpet, the petitioner has preferred this appeal.
3. The appellant was the petitioner and the respondent was the respondent in MC No.27/2015 before the Trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.
4. The marriage of the petitioner and the respondent was solemnized on 05.02.2012. The marriage did not sail smooth. The respondent filed Cr.M.C.No.331/2015 before the Civil Judge and JMFC, Ponnampet complaining that the petitioner and his family members have subjected her to domestic violence. Accepting her allegation of NC: 2024:KHC:10742-DB domestic violence, the Civil Judge and JMFC, Ponnampet allowed Cr.M.C.No.331/2015 awarding monthly maintenance of Rs.15,000/- with escalation at 5% every year. The said Court awarded compensation of Rs.2,00,000/- as damages for misappropriation of the jwelleries of the respondent/wife and Rs.5,00,000/- as compensation for the domestic violence inflicted on her.
5. The petitioner filed M.C.No.27/2015 before the Trial Court seeking decree for dissolution of marriage on the ground of cruelty. The respondent contested the petition denying the allegations of cruelty and claimed that appellant himself was guilty of cruelty. Before the Trial Court, the parties adduced evidence. The Trial Court on examining the evidence on record and hearing the parties, allowed the petition for dissolution of marriage and granted Rs.10,00,000/- as permanent alimony to respondent/wife and litigation expenses NC: 2024:KHC:10742-DB of Rs.30,000/-. The Trial Court held that on payment of such permanent alimony and litigation expenses, the petitioner need not pay future maintenance in terms of the order in Cr.M.C.No.331/2015 which is marked at Ex.R1 before the Trial Court.
6. The respondent has not challenged the decree for dissolution of marriage and the quantum of permanent alimony. The petitioner/appellant challenges the judgment and decree of the Trial Court only so far it relates to grant of permanent alimony. The respondent/wife though served, unrepresented.

7. Learned counsel for the petitioner/ husband submits that the petitioner owns only 3 acres 60 cents of land and his qualification is only PUC; whereas, the wife is an MBA graduate and working. Therefore, permanent alimony awarded is on the higher side.

NC: 2024:KHC:10742-DB

8. The records show that despite the respondent seeking permanent alimony and filing her assets and liabilities statement, the petitioner did not file his assets and liabilities statement. He did not produce any material regarding his qualification. In his cross-examination, he has admitted that at the time of marriage, he was a Coffee Planter and his family owned 23 acres of Coffee Plantation. He further admitted that he is dealing in vehicles and for sale of each vehicle, he gets commission of Rs.2,000/- to Rs.3,000/-. Though he claims that his parents have sold the property to his sisters, he has not produced any materials regarding the same. He admitted that his sisters are married and they are affluent than him.

9. So far as qualification and status, he admitted in his cross-examination that he married the respondent on the ground that she matches his status. Therefore, his contention that he is only a NC: 2024:KHC:10742-DB 12th pass, the respondent is MBA graduate and she earns more than him was rightly rejected by the Trial Court. Admittedly considering his financial capacity, in the proceedings under the Protection of Women from Domestic Violence Act, 2005, maintenance of Rs.15,000/- per month was awarded with escalation of 5% each year. He has not challenged that order. He admits that he has deposited the compensation of Rs.2,00,000/- + Rs.5,00,000/- awarded in the Domestic Violence proceedings. Even in this case, he has deposited Rs.2,50,000/-.

10. Ex.R1 in these proceedings is the copy of the judgment in Cr.M.C.No.331/2015. Exs.P40, P41 and P42 in Cr.M.C.No.331/2015 are the copies of surety affidavits and RTC extracts. On the direction of this Court, the appellant produced the same in this case. Exs.P40 and P41 show that the appellant stood as surety to one M.K. Kaverappa in NC: 2024:KHC:10742-DB C.C.No.374 and 373 of 2017 before Civil Judge and JMFC, Ponnampet. In those affidavits, he claims that his property bearing Sy.No.73/1 alone values more than Rs.10,00,000/-.

11. The appellant failed to submit his assets and liabilities statement before the Trial Court and even before this Court. For suppression of the same, an adverse inference has to be drawn against him about his paying capacity. The Trial Court on judicious appreciation of the evidence placed before it, has awarded permanent alimony of Rs.10,00,000/-. There are no grounds to interfere with the same. Therefore, the appeal is dismissed.

Sd/-

JUDGE Sd/-

JUDGE PA CT:HS

Sri Gopal D H vs Smt Padmashree on 15 March, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

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NC: 2024:KHC:10932
CRL.P No. 5821 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2024

BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
CRIMINAL PETITION NO. 5821 OF 2018
BETWEEN:

1. SRI. GOPAL D.H.,
S/O LATE DALI HANUMANNA,
AGED ABOUT 66 YEARS.
2. SMT. LAKSHMI,
W/O GOPAL D.H.,
AGED ABOUT 59 YEARS,

ALL ARE RESIDING AT 26/2,
CAR STREET, DODDABALLAPURA TOWN,
BANGALORE RURAL DISTRICT - 561 203.

...PETITIONERS

(BY SRI. SUBASH REDDY V., ADVOCATE)

AND:

Digitally signed by NARAYANAPPA LAKSHMAMMA Location: HIGH COURT OF KARNATAKA	SMT. PADMASHREE, W/O D.G. MANJUNATH, AGED ABOUT 31 YEARS, AT PRESENT RESIDING AT NO.1050, CHANDRASHEKARAPURA, DODDABALLAPURA TOWN, BANGALORE DIST - 561 203.
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...RESPONDENT

(BY SRI. B.S. MURALI, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH

THE PETITION FILED BY THE RESPONDENT UNDER SECTIONS
12, 18, 19, 20 AND 22 OF PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005 AND ENTIRE PROCEEDINGS ON THE FILE

-2-

NC: 2024:KHC:10932
CRL.P No. 5821 of 2018

CRL.MISC.NO.92/2018, PENDING BEFORE THE PRINCIPAL CIVIL
JUDGE AND JMFC DODDABALLAPURA.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs:

(a) To Quash the Petition filed by the Respondent in entire proceedings on the file C.Misc. No. 92/2018, pending before the Prl.Civil Judge & JMFC Doddaballapura as against the petitioners, and

(b)

(ii) To award costs and to pass such other orders or directions as this Hon'ble Court deems fit and necessary in the circumstances of this case to meet the ends of justice.

2. A memo dated 15.03.2024 has been filed and signed by the counsel for the petitioners, which reads as under:

"The petitioner most respectfully submit this Hon'ble Court in view of the settlement arrived between petitioner so and respondent. The petitioner son and the respondent have settled the matter before the Bangalore Mediation Centre and the M.F.A.No.7355/2020 (M.C.), came to be disposed of by order dated 21.03.2023. In view of the above subsequent developments that have taken place this criminal petition will not survive for consideration. There is no domestic relation between petitioner and respondent.

Hence, it is most respectfully prayed that this Hon'ble court be pleased to dismiss this criminal petition as having become infructuous in the interest of justice and equity."

NC: 2024:KHC:10932

3. Accepting the said memo and submission of the counsel for the petitioners, the petition is dismissed as settled out of Court.

Sd/-

JUDGE GJM CT:SNN

Smt. Deepika W/O Abhishek Bagrecha D/O ... vs Sri. Abhishek Bagrecha S/O Ramesh Kunal on 14 March, 2024

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NC: 2024:KHC-D:5282
CP No. 100012 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 14TH DAY OF MARCH, 2024

BEFORE
THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL
CIVIL PETITION NO. 100012 OF 2024

BETWEEN:

SMT. DEEPIKA W/O. ABHISHEK BAGRECHA
D/O. CHOPARNENMAL,
AGED ABOUT 36 YEARS, NO.7,
CHAMUNDI VIHAR LAYOUT,
BEHIND CHAMUNDI VIHAR STADIUM,
NAZARABAD-570010.

...PETITIONER
(BY MISS. P. POOJA, ADVOCATE)

AND:

SRI. ABHISHEK BAGRECHA
S/O. RAMESH KUNAL,
AGED ABOUT 35 YEARS,
NO.94, 2B, 2C, FORT MAIN ROAD,
NEAR JAIN TEMPLE,
TQ AND DIST: BALLARI-583102.

Digitally signed
by ROHAN
HADIMANI T
Location: HIGH
COURT OF
KARNATAKA

...RESPONDENT
(NOTICE TO RESPONDENT SERVED)

THIS CIVIL PETITION IS FILED U/S. 24 OF CPC, 1908,
PRAYING TO CALL THE RECORDS IN M.C.NO.186/2023 ON THE FILE
OF THE PRINCIPAL JUDGE, FAMILY COURT AT BELLARY AND TO
TRANSFER THE PETITION IN M.C.NO.186/2023 ON THE FILE OF THE
PRINCIPAL JUDGE, FAMILY COURT AT BELLARY TO THE PRINCIPAL
FAMILY JUDGE, AT MYSURU AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 24 of CPC seeking to transfer MC No.186/2023 pending on the file of Principal Judge, Family Court, Ballari to the Principal Judge, Family Court, Mysore.

2. Heard the learned counsel Miss P. Pooja for the petitioner. Though notice of this petition is served on the respondent, he remained absent and placed exparte.

3. It is submitted that the marriage of the petitioner and respondent was solemnized on 6.12.2014 and thereafter, the respondent left the petitioner to her parents' house and later he has neglected her and never taken back. It is submitted that from the said wedlock, a male child was born on 6.5.2022. It is further submitted that the respondent is in the habit of causing cruelty to the petitioner, which compelled her to stay with her parents at Mysore. It is also submitted that the petitioner is having a baby of 18 months. Hence, she is unable to attend the proceedings initiated by the respondent/husband at Ballari Court.

NC: 2024:KHC-D:5282

4. Heard the learned counsel for the petitioner and perused the material available on record.

5. It is not in dispute that the marriage between the petitioner and respondent was solemnized on 6.12.2014 and from the said wedlock, a male child was born. The material available on record indicates that the petitioner is residing with her parents at Mysore along with new born baby of 18 months. Pleadings and material on record indicate that the petitioner/wife is a homemaker and does not have any independent source to travel to attend the proceedings at Ballari Court, where the respondent/Husband has initiated proceedings under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. The material available on record further indicates that the petitioner has initiated proceedings under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 against the respondent seeking maintenance and other reliefs, which is pending on the file of the JMFC-III, Mysore. Taking note of the pendency of Crl.Misc.No.129/2023 on the file of JMFC-III, Mysore and keeping in mind the convenience of the parties, it would be just and appropriate to transfer MC No.186/2023 NC: 2024:KHC-D:5282 pending on the file of the Principal Judge, Family Court, Ballari to the Principal Judge, Family Court, Mysore.

6. Hence, I proceed to pass the following:

ORDER

a) Civil Petition is allowed.

b) MC No.186/2023 now pending on the file of the Principal Judge, Family Court, Ballari is withdrawn from the said Court and made over to the Principal Judge, Family Court, Mysore, for trial in accordance with law.

Sd/-

JUDGE JTR

Sri M G Raghavendra vs Shobha L on 13 March, 2024

Author: Mohammad Nawaz

Bench: Mohammad Nawaz

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NC: 2024:KHC:10618
CRL.P No. 10457 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ
CRIMINAL PETITION NO. 10457 OF 2023

BETWEEN:

1. SRI M G RAGHAVENDRA
S/O LATE M GANGADHARIAH,
AGED ABOUT 42 YEARS,
PRACTICING AS AN ADVOCATE,
RESIDING AT NO.321, 7TH MAIN,
BCMC LAYOUT, RAGHUVANAHALLI,
KANAKAPURA MAIN ROAD,
BANGALORE-560062.

...PETITIONER

(BY SMT. K VIJAYALAKSHMI, ADVOCATE)

AND:

- Digitally signed by LAKSHMI T Location: High Court of Karnataka
1. SHOBHA L
W/O M G RAGHAVENDRA
D/O LATE LAKSHMINARAYANA A N
AGED ABOUT 35 YEARS
WORKING IN GOVERNMENT HOSPITAL
 2. MASTER DAIVIK R
S/O M G RAGHAVENDRA,
AGED ABOUT 12 YEARS, MINOR,
 3. MASTER SANKALP R
S/O M G RAGHAVENDRA,
AGED ABOUT 8 YEARS, MINOR,

RESPONDENT NOS.2 AND 3 ARE MINOR

REPRESENTED THROUGH THEIR

-2-

NC: 2024:KHC:10618
CRL.P No. 10457 of 2023

NATURAL GUARDIAN MOTHER I.E.,
1ST RESPONDENT
ALL ARE RESIDING AT DAIVIK NILAYA
SITE NO 20, BHAVANI LAYOUT,
11TH CROSS, I.U.D.P LAYOUT,
CHITRADURGA TOWN-577501.

...RESPONDENTS

(BY SRI. GURUDATH V.R., ADVOCATE FOR R1;
R2 AND R3 ARE MINORS REP. BY R1 NATURAL GUARDIAN
MOTHER)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO
TRANSFER CRL.MISC.NO.507/2018 ON THE FILE OF PRL. CIVIL
JUDGE AND J.M.F.C COURT AT CHITRADURGA TO
JURISDICTION COURT AT BENGALURU AND DISPOSE OFF THE
MATTER BY ALLOWING THIS PETITION.

THIS PETITION, COMING ON FOR DISPOSAL, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition under Section 407 of Cr.P.C. is preferred by the petitioner to transfer Crl.Misc.No.507/2018 pending on the file of the Court of the Principal Civil Judge and JMFC at Chitradurga to the jurisdictional Court at Bengaluru.

2. Heard the learned counsel for petitioner and the learned counsel for the respondents and perused the material on record.

NC: 2024:KHC:10618

3. Respondent No.1 is the wife of the petitioner whose marriage was solemnized with him on 12.04.2010 in Ganesh Temple at Holalkere Town, Chitradurga District. Crl.Misc.No.507/2018 is filed by respondent No.1/wife under Protection of Women from Domestic Violence Act, 2005 against the petitioner/husband and two others before the II Additional Civil Judge and JMFC Court, Chitraduraga, where it is pending. Transfer of the said petition to the Court in Bengaluru is sought by the petitioner/husband on the ground that the respondent No.1/wife is a very influential person having contact with local leaders and her uncle is a Corporator in Chitradurga Municipality and therefore, she is having men and muscle power. It is further stated that the respondent No.1 has threatened the petitioner many times and there is a life threat to the petitioner and therefore, he is unable to go to Chitradurga to attend the case.

4. The learned counsel for petitioner has contended that despite lodging of complaint to the NC: 2024:KHC:10618 concerned police, no action has been taken against the respondent No.1, which confirms that she is prevailing upon the police using her influence. She has contended that the petitioner has a strong apprehension that if he visits Chitradurga, respondent No.1 will cause physical harm to him through her henchmen and therefore, balance of convenience lies in his favour, to transfer the case as prayed. Further, she has contended that a case is registered in FIR No.149/2021 at Wilson Garden Police Station, Bengaluru, against the respondents and three others. Investigation in the said case is pending.

5. The learned counsel for respondents has contended that the entire allegations are false. He would contend that two cases are filed by the petitioner/husband, one for dissolution of marriage and another seeking custody of his children and both are pending in the Court of Chitradurga. Further, contended that one more petition was filed by the petitioner in Bengaluru to declare the marriage as null and void and NC: 2024:KHC:10618 this Court in CP No.327/2023 preferred by respondent No.1 was pleased to transfer the said petition to Chitradurga Court. He submits that there is no life threat to the petitioner as alleged.

6. I have perused the complaint given by the petitioner to the police apprehending threat and seeking protection, which is produced as document No.5. The said complaint is dated 25.10.2018. Even though it is alleged that similar complaints were given to the police and no action has been taken, it is not the case of the petitioner that subsequent to filing of the said complaint any such incident took place in Chitradurga as apprehended by the petitioner. The petitioner, said to be an advocate, could have filed a private complaint, if the higher officers had not taken any action on the complaint lodged by him. Be that as it may, MC No.99/2023 and G & W.C.No.16/2023 preferred by the petitioner are pending before the jurisdictional Courts in Chitradurga. Further, petition seeking to declare the marriage as null and void etc., in NC: 2024:KHC:10618 M.C.No.4027/2023, which was filed in Bengaluru has been transferred to Chitradurga by this Court in C.P.No.327/2023.

7. No grounds are made out to consider the prayer of the petitioner. Petition is devoid of merits and accordingly, it is dismissed.

8. In view of dismissal of the petition, I.A.No.1/2023 stands disposed of.

SD/-

JUDGE TL

Devendra K C vs State Of Karnataka on 13 March, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:10320
CRL.P No. 3281 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2024

BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 3281 OF 2022

BETWEEN:

1. DEVENDRA K.C.
AGED ABOUT 72 YEARS,
S/O CHUDAPPA GOWDA,
2. BHARATH KUMAR.K
AGED ABOUT 41 YEARS,
S/O DEVENDRA,

PETITIONER NO.1 & 2 ARE R/AT:
KODLU VILLAGE,
THIRTHAHALLI TALUK,
SHIMOGGA,
KARNATAKA - 577 234.

Digitally signed by BHAVANI BAI G
Location: High
Court of Karnataka

3. JAYANTHA KUMAR
AGED ABOUT 43 YEARS,
S/O DEVENDRA,
KODLU VILLAGE,
PRESENTLY R/AT 2ND CROSS,
B-BLOCK,
GANDHI NAGARA,
SHIVAMOGGA,
KARNATAKA - 577 201.

...PETITIONERS

(BY SRI. PRASAD HEGDE K B., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY AGUMBE PS
POLICE STATION, THIRTHAHALLI CIRCLE,
SHIVAMOGGA DISTRICT - 577 201.

REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001.

2. SMT. B. N. NAVYA GOWDA
W/O JAYANTH KUMAR,
AGED ABOUT 40 YEARS,
KODLU, UNTURUKATTE,
KAIMARA,
THIRTHAHALLI TALUK,
SHIVAMOGGA - 577 234,

PRESENTLY R/AT NO.34/1,
CHIKKAHONNEHAHALLI EXTENSION,
NEAR VIJAYA SCHOOL,
HASSAN CITY, HASSAN - 573 202.

... RESPONDENTS

(BY SMT. ANITHA GIRISH, HCGP FOR R1;
SRI. GIRISH B. BALADARE, ADVOCATE FOR R2)
THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE FIR DATED 27.12.2021 AS
PER ANNEXURES A IN CR.NO.89/2021 FILED FOR THE
OFFENCE P/U/S.341, 504, 506, 323, 354, 498-A, 109, 34 OF
IPC 1860, PENDING BEFORE THE ADDITIONAL CIVIL JUDGE
(Sr.Dn.) AND CJM COURT, THIRTHAHALLI, SHIVMOGGA
(ORDER SHEET IS NOT YET OPENED, ONLY RECEIVED FIR)
AND COMPLAINT DATED 27.12.2021 AS PER ANNEXURE-B.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

-3-

This petition is filed by the petitioners-accused Nos.1 to 3 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.350/2022 registered by the Thirthahalli Police Station, Shivamogga in Crime No.89/2021 and charge sheeted for the offences punishable under Sections 341, 504, 506, 323, 354, 498A, 109 read with Section 34 of IPC.

2. Heard the arguments of learned counsel for the petitioners, learned High Court Government Pleader for respondent No.1-State and learned counsel for respondent No.2.

3. The case of the prosecution is that the respondent No.2 filed a complaint on 27.12.2021 alleging that she married accused No.3, the petitioner No.3 herein, in the year 2010. When she went to her parents house for the first delivery and came back in the year 2013, they have not allowed her inside the house and thrown out of the house. Hence, she was residing in her parents' house. Subsequently, she has filed petition for maintenance under the D.V. Act. The maintenance of Rs.10,000/- has been awarded and since three years, NC: 2024:KHC:10320 petitioner-accused No.3 has not paid the arrears of maintenance. Hence, on 27.12.2021, she herself along with her child and father came to the matrimonial home and stayed. Accused Nos.1 and 2 who are brother-in-law and father-in-law of the complainant assaulted her and thrown out of the house by twisting the hand, abusing in filthy language and threatening her. Subsequently, the complaint came to be filed and the FIR has been registered and charge sheet has been filed, which is under challenge.

4. The learned counsel for the petitioners has contended that the allegation against accused Nos.1 and 2 for having assaulted the complainant on 27.12.2021 and the accused No.3 was not at all present who was an advocate practicing at Shivamogga. It is alleged in the charge sheet only that he has abetted accused Nos.1 and 2 for the offence. Absolutely, there is no ingredients to attract Section 498A of IPC and he also contended that the D.V. Act case also filed against the husband and parents-in-law, where the case has been dismissed against the parents-in-law and maintenance have been granted in favour of respondent No.2 as against her husband. This is pending before the Sessions Court in the NC: 2024:KHC:10320 appeal. The learned counsel also submitted that a divorce case is filed by him and restitution of conjugal rights case is filed by his wife which is pending before the Family Court, Hassan. Absolutely, there is no case for framing of charge. Hence, prayed for quashing the criminal proceedings. The learned counsel further contended that there is no independent witnesses to the case, except the parents of the complainant.

5. Per contra, learned High Court Government Pleader seriously objected the petition and contended that one Venkatesh was the independent witness other than the parents of the complainant. Accused No.3 is the husband who was harassing the complainant. Therefore, matter is required for framing of charge and face the trial. Accused No.3 has abetted the other accused to commit the offence. Hence, prayed for dismissing the petition.

6. Learned counsel for respondent No.2 seriously objected the petition and contended that the maintenance has not been paid properly, therefore, she has filed petitions before the Court and arrears also not properly paid by him. He has filed a case at Hassan even though he is residing at Thirthahalli NC: 2024:KHC:10320 and practicing at Shivamogga. Hence, prayed for dismissing the petition.

7. Having heard the arguments, on perusal of the records and on perusal of the entire complaint, which reveals, the marriage was held in the year 2010 and after the marriage, she went to her parental home for delivery and came back in June 2013, where the accused persons quarreled with her and sent her back again. Thereafter, the complainant did not chosen to file any complaint to the Police against any of the accused persons. However, in the year 2015, she has filed a petition under Section 9 of the Hindu Marriage Act, 1955 and 37(2)(c) of the Protection of Women from Domestic Violence Act, 2005 and also sought maintenance. The petition was tried by the Magistrate and it was partly allowed. Rs.10,000/- awarded as maintenance to her and petition against the parents-in-law was dismissed. Now the appeal is pending before the Sessions Judge, Hassan. It is also an admitted fact that the petition for restitution of conjugal rights as per Section 9 of the Hindu Marriage Act. The petitioner-accused No.3 also said to be filed a case for divorce.

NC: 2024:KHC:10320

8. On perusal of the D.V. Act case, there is no allegation under Section 498A of IPC for physical or mental harassment by the petitioner during the relevant gap between 2021 and 2013. In the meanwhile, there was pendency of cases against each other before the Family Court as well as the Magistrate which is in dispute. However, on 27.12.2021, the respondent No.2 came along with her father and child, entered the matrimonial home, at that time, accused Nos.1 and 2 said to be assaulted her, twisted her hand and said to be outraged the modesty, abused her and thrown out of the house which is revealed from the statement of the father, other neighbours and one Venkatesh who is an independent witness. From 2013 to 2021, there is no allegation of any demand of dowry or mental and physical harassment by accused No.3 or accused Nos.1 and 2. Hence, the case against the accused is dismissed by the Magistrate under the D.V. Act. Such being the case, the question of continuing the proceedings as against accused Nos.1 to 3 for the offence punishable under Sections 498A or 109 of IPC does not arise. However, on 27.12.2021, the accused Nos.1 and 2 assaulted the complainant and accused NC: 2024:KHC:10320 No.1 said to be filed complaint against respondent No.2 which is in Crime No.1/2022.

9. Considering the same, the accused Nos.1 and 2 required to face the trial for the offence punishable under Sections 341, 504, 506, 323, 354 read with Section 34 of IPC. However, they are not chargeable for the offence under Sections 498A or 109 of IPC against accused No.3. Considering the same, I proceed to pass following order:

10. Accordingly, the petition is allowed in part. The petition filed by the petitioner-accused No.3 is allowed and the proceedings against the petitioner-accused No.3 is hereby quashed.

However, the petition filed by accused No.1 and 2 is partly allowed.

The charge sheet against accused Nos.1 and 2 for the offences punishable under Sections 498A and 109 of IPC is hereby quashed and for the remaining offences, they have to face the trial.

Sd/-

JUDGE GBB_List No.: 1 Sl No.: 25_CT:SK

Sri. Shankarananda vs State Of Karnataka on 12 March, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:10107
CRL.P No. 5079 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 5079 OF 2022

BETWEEN:

1. SRI. SHANKARANANDA
S/O GANGAPPA,
AGED ABOUT 38 YEARS,
R/O 807, 9TH CROSS,
GOKULA FIRST STAGE,
II PHASE, YESHWANTAPURA,
BANGALORE - 560 022.

2. SRI. GANGAPPA
S/O LATE MUDDIAH,
AGED ABOUT 72 YEARS,
R/O 807, 9TH CROSS,
GOKULA FIRST STAGE,
II PHASE, YESHWANTAPURA,
BANGALORE - 560 022.

Digitally signed by
VEDAVATHI A K
Location: High
Court of Karnataka

3. SMT. RAMADEVI M
W/O GANGAPPA,
AGED ABOUT 70 YEARS,
R/O 807, 9TH CROSS,
GOKULA FIRST STAGE,
II PHASE, YESHWANTAPURA,
BANGALORE - 560 022.

...PETITIONERS

(BY SRI. UDAYA PRAKASH MULIYA, ADVOCATE)

-2-

NC: 2024:KHC:10107
CRL.P No. 5079 of 2022

AND :

1. STATE OF KARNATAKA
THROUGH BEGUR POLICE STATION,
BENGALURU CITY,
REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.
2. SMT. SNEHA
W/O SHANKARANAND,
AGED ABOUT 33 YEARS,
R/OP 283/1,
RAJATADRINILAYA,
CLASSIC PARADISE,
BEGUR,
BANGALORE - 560 068.

... RESPONDENTS

(BY SMT. ANITHA GIRISH, HCGP FOR R1;
SRI. ROSHAN H.C., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO a) QUASH THE ORDER DATED
10.03.2021 TAKING COGNIZANCE FOR THE ALLEGED
OFFENCES P/U/S 498A, 323, 504, 506 R/W 34 OF IPC AND
SECTION 3 AND 4 OF DOWRY PROHIBITION ACT IN
C.C.NO.6079/2021 (ARISING OUT OF FIR IN CR.NO.184/2020)
PENDING BEFORE THE XLI ADDL.C.M.M., BENGALURU
PRODUCED AS ANNEXURE-A.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC:10107
CRL.P No. 5079 of 2022

ORDER

This petition is filed by the petitioners/accused Nos.1 to 3 under Section 482 of Cr.P.C., for quashing criminal proceedings in C.C.No.6079/2021 arising out of FIR in Crime No.184/2020 for the offence punishable under Sections 498A, 323, 504, 506 read with 34 of IPC and Sections 3 and 4 of DP Act.

2. Heard the arguments of learned counsel for the petitioner, learned HCGP for the state. Learned counsel for respondent No.2, remained absent.

3. The case of prosecution is that, on the complaint filed by the respondent No.2 before the Magistrate, the same was got referred to police under Section 156 (3) of Cr.P.C. and FIR was registered. It is alleged by the complainant that she has married the petitioner No.1, and her parents had given huge dowry by way of silver, gold articles, apart from that, the utensils and even had spent Rs.4 to 5 lakhs during the engagement ceremony. After the marriage, the accused persons started harassing her physically and mentally and demanding dowry. Even the petitioner had demanded for gold jewellery for accused No.3, who is mother-in-law. The NC: 2024:KHC:10107 complainant decides to leave the job prior to the marriage and she purchased the gold ornaments to accused No.2 after obtaining the PF withdrawal amount. They have not allowed her to go to parents house and they insisted, if she comes back from the parents house to the matrimonial house, she has to bring the golden ornaments. But in one of the occasions, she went to the parents house and while coming back, she was forced to bring the golden ornaments for accused No.3. It is also alleged by the complainant that, they demanded a site for accused No.3, though the parents of the respondent No.3 had selected a site, measuring 30 x 40 sq.ft., at JP Nagar, but the petitioner wanted big size site. Therefore, the accused persons themselves identified a site measuring 60 x 40 sq.ft., site at Bommanahalli and the respondent No.3 brought amount of Rs.55 lakhs for the purchase of site at Bommanahalli and said site has been purchased in the joint name of accused No.1 and respondent No.2. On one of the occasions, they said to have assaulted her physically on 1.12.2017 and causing injury from the nose and she fell unconscious. Thereafter, accused themselves took her to the M.S.Ramaih Hospital and falsely stated she herself sustained injury and she was not allowed to NC: 2024:KHC:10107 talk to the doctors, though she has stated that she had attempted to commit murder. Further she has also stated the accused demanded her that her salary should be transferred to the bank account of accused No.2. Accordingly, she has transferred all her salary in the account of the accused No.2 of amount of more than Rs.4.5 lakhs and the same has been received by parents and it is kept in the account of accused No.2. Further it was kept in the Fixed Deposit, in the name of accused No.2. There were various other allegations and has prayed for taking action against the petitioner, she also stated accused No.3 said to be mentally not stable and she also started continuously harassing the complainant. After registering the FIR, the police investigated the matter, filed the charge sheet, which is under challenge.

4. Learned counsel for the petitioner contended there is no serious and specific allegation against accused Nos.2 and 3 and it is an omnibus allegation and it is general allegation, where a civil suit is pending between the parties and she has filed suit against the petitioner for partition and the matrimonial case was also filed for the recovery of money and petitioner said to be filed suit for partition as he said to be borrowed loan NC: 2024:KHC:10107 and paid money for purchasing the site. It is stated that the respondent No.2 also filed case under Section 120B Cr.P.C. for maintenance and all the cases are pending before the court. She also filed case against the petitioner under the Protection of Women from Domestic Violence Act, 2005. The case is triable and hence prayed for quashing the criminal proceedings.

5. Per contra, learned HCGP seriously objected the petition, contending that there is continuous allegation against petitioner for having harassed the respondent No.2/complainant by these petitioner family. There is categorical allegation made in the complaint for having harassed the respondent No.2 and the case is triable case, cognizable case is made out for trying the offence,

hence prayed for dismissing the petition.

6. Having heard the arguments, perused the records the marriage between the petitioner no.1 and respondent no. 2 is not in dispute. At the time of marriage, the petitioner said to be received huge amount of dowry and even in the engagement ceremony it is stated that Rs.4 to 5 lakhs have been spent by parents of the respondent No.2. The marriage NC: 2024:KHC:10107 was held on 19.02.2014 and approximately Rs.25 lakhs has been spent for marriage excluding the jewellery. After the marriage, she has stayed in the matrimonial home, where in March 2014, the accused No.1 and his parents have forced to buy gold jewellery for accused No.3. Inspite of the financial stress she was forced to withdraw Provident Fund amount from her previous job and purchased the gold jewellery for accused No.3. Subsequently, during the Ugadi festival, first year of marriage, she wanted to go to her parents house, when once again the petitioner not allowed her to go to parents house and they put condition, that if she goes to parents house, while she is coming back, she has to bring new gold jewellery to accused No.3. Accordingly, she went to her parents house and brought jewellery to accused No.3 as per the demand. Further stated she is working in private company 'Deloitte' and earning Rs.40,000/- salary from May 2014. However, the accused Nos.1 and parents threatened to stop her from going to work unless she transfers, the entire salary to the account of accused No.2, though she previously refused, but after the fight, she was forced to transfer the salary to the account of the accused No.2. She further stated that there was continuous abuse and NC: 2024:KHC:10107 misunderstanding between the petitioners and the complainant. The accused No.1 used to obey accused Nos.2 and 3 and he used to quarrel and she also stated accused No.3 was mentally not stable. Subsequently, the accused persons demanded site in the name of the accused No.1, the parents of the respondent No.2 identified a site measuring 30 x 40 sq.ft at JP Nagar, 9th phase, where accused not agreed and they wanted a bigger site. Accordingly a site measuring 40 x 60 sq.ft has been identified at Bommanahalli, though it was priced high, but said to be paid an amount of Rs.55 lakhs for purchasing the site, that too the site was purchased in the joint name of accused No.1 and the complainant. The sale deed was executed on 28.7.2015. She further alleges almost in all paragraphs of the complaint, specific allegation has been made against the accused persons that whenever she goes to her parents house, she was forced to bring the golden ornaments and cash. It is also stated that the accused No.1 was unable to arrange for the construction, therefore, the land was given to the joint developers under joint development agreement. She further alleged in the March 2015, accused No.1 and his mother insisted the complainant to go to scan at Dr.Padma NC: 2024:KHC:10107 Rangaswamy, a gynecologist but the complainant refused to take an additional scan as she already got her scan done at cloud 9 hospital, since they kept demanding complainant and got done another scan. However, complainant was not aware about the ulterior motive that accused Nos.1 and 3 and the complainant had to go to Manasa hospital to get scan done, as they wanted to know the sex of the baby and the doctors refused to reveal the sex of the baby, but the accused persons wanted to know the sex of the baby and dragged the complainant out of the hospital and physically and mentally abused her. On reading the complaint there is specific allegation against all the accused persons for having demanded money and receiving money, even the accused No.1 had sold two apartments for Rs.92 lakhs and received sale consideration. On perusals of the entire complaint, there is specific allegation against all the accused persons, for having harassed the complainant, physically and mentally and assaulting her. Though civil cases were pending between the parties for recovering money, by the respondent No.2 and suit filed for

partition, they were all pertaining to civil matters and Domestic Violence Act cases are also filed, maintenance case is

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NC: 2024:KHC:10107 also filed, which is altogether different. Here in this case, a specific and cognizable offence is made out for framing of charge for the alleged offences. Therefore, this court cannot interfere at this stage for quashing the FIR and the charge sheet.

7. Accordingly, though the Hon'ble Supreme Court has held in various cases, where there is omnibus allegation made against the in-laws, the court can quash the criminal proceedings. But where there is specific allegation made against all the accused persons, they have continuously tortured the complainant physically and mentally for demanding the dowry silver, gold etc., and also purchased property and got money transferred online in the name of accused No.2. Such being the case, it is not a fit case for quashing the criminal proceedings.

Accordingly, this petition is dismissed.

Sd/-

JUDGE AKV CT:SK

Sri M Ravindranath vs Smt Pankaja T on 12 March, 2024

Author: K.Natarajan

Bench: K.Natarajan

- 1 -

NC: 2024:KHC:10148
CRL.P No. 5001 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.5001 OF 2022

BETWEEN:

SRI M. RAVINDRANATH
@ MANTRI RAVINDRANATH
AGED ABOUT 51 YEARS
R/AT "RAVINDRANATH MANTHRJI"
NO.15-28-53, KAMALA NAGAR
MEDIPALLYA, HYDERABAD,
TELANGANA STATE - 500 098
HEREIN REPRESENTED BY NEXT
FRIEND SMT. MANTRI MANEMMA
W/O MALLAIAH

...PETITIONER

(BY SRI. RAVINDRANATH KAMATH, SR. COUNSEL FOR
SMT. SHASHIREKHA M.SHETTY, ADVOCATE)

AND:

Digitally signed by JAI
JYOTHI J

Location: HIGH
COURT OF
KARNATAKA

SMT. PANKAJA. T

W/O M.RAVINDRANATH @
MANTI RAVINDRANATH
D/O LATE T. DASHARATHA
AGED ABOUT 45 YEARS
R/AT NO.43, 3RD CROSS
NEAR AYYAPPA SWAMY TEMPLE
VIDYAPEETA LAYOUT
THYAGARAJANAGAR

BENGALURU - 560 028.

... RESPONDENT

(BY SMT. JYNA KOTHARI, SR. COUNSEL FOR
SRI. MEGALAMANE PRABHU, ADVOCATE)
-2-

NC: 2024:KHC:10148
CRL.P No. 5001 of 2022

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.133/2020-21 ON THE FILE OF M.M.T.C.-II, BENGALURU, THE ORDER SHEET AND COMPLAINT ARE PRODUCED AT ANNEXURE-H AND D INITIATED BY THE RESPONDENT AGAINST THE PETITIONER UNDER THE PROVISIONS OF PROTECTIONS OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

After arguing the matter for some time, the learned counsel for the petitioner seeks permission of this Court to withdraw the petition.

2. The submission of the learned counsel for the petitioner is placed on record.
3. Accordingly, petition is dismissed as withdrawn.

In view of dismissal of the main petition, all pending I.As., if any, do not survive for consideration and it is disposed of.

Sd/-

JUDGE PB

Smt Sandhya Kumari vs Sri Ravindra M on 6 March, 2024

Author: S Sunil Dutt Yadav

Bench: S Sunil Dutt Yadav

-1-

NC: 2024:KHC:9297
CP No.314 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF MARCH, 2024
BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV
CIVIL PETITION NO.314 OF 2022

BETWEEN:

1. SMT. SANDHYA KUMARI
AGED ABOUT 42 YEARS
W/O RAVINDRA M
R/AT DOOR NO.5-124B-3
SOWPARNIKA, VASUKI NAGAR
PUTTUR VILLAGE, SANTHEKATTE POST
UDUPI TALUK AND DISTRICT 576105.

...PETITIONER

(BY SRI. PRASANNA V.R. ADV.,)

Digitally signed
by VIJAYA P
Location: HIGH
COURT OF
KARNATAKA

AND:

1. SRI. RAVINDRA M
AGED ABOUT 46 YEARS
S/O LATE PARAMESHWAR
R/AT C/O SAHANA ARYA
KANTHAPURA VILLAGE, HALEPETE
PERIYAPATTANA TALUK
MYSORE DISTRICT 571107.

...RESPONDENT

(BY SMT. MANJULADEVI R. KAMADDLLI, ADV.,)

THIS CIVIL PETITION IS FILED UNDER SEC.24 OF
CPC, PRAYING TO PASS AN ORDER, WITHDRAWING THE
O.S.NO.251/2020 PENDING ON THE FILE OF THE
LEARNED PRL. CIVIL JUDGE AND JMFC, PERIYAPATNA,
MYSURU AND TRANSFER THE SAME TO THE LEARNED I

ADDL. CIVIL JUDGE AND JMFC., UDUPI WHERE THE
PETITION FILED BY THE PETITIONER IN MIS.CASE NO.
52/2020 UNDER D V ACT IS PENDING AND TO
ADJUDICATE THE SAME BY ALLOWING THIS PETITION IN
THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner - Wife has sought for withdrawal of the proceedings in M.C.No. 251/2020 pending on the file of the Principal Civil Judge and JMFC, Periyapatna, Mysuru, and has sought for the same to be transferred to the I Additional Civil Judge and JMFC, Udupi, where proceedings in C.Misc.52/2020 instituted under the Protection of Women from Domestic Violence Act, 2005, is pending adjudication.

2. The case of the petitioner is that respondent - husband has instituted O.S.No.251/2020 seeking for damages to be payable by the petitioner at Rs.4,50,000/- which proceedings is pending before the Court at Periyapatna. It is not in dispute that the petitioner is a NC: 2024:KHC:9297 resident of Udupi and if she were to attend the proceedings in O.S.No. 251/2020 before the Court at Periyapatna, she is required to travel about 250 Kms. which travel would inconvenience the petitioner is a submission that requires acceptance. It is submitted that the petitioner has no independent source of income and that she has a daughter studying PUC and leaving her alone while travelling to attend the proceeding further inconveniences her. Learned counsel for the petitioner also submits that respondent has already appeared in some of the proceedings pending before the Court at Udupi.

3. Learned counsel for the respondent submits that it is the apprehension of the respondent - husband that if the proceedings are transferred to the Court at Udupi, there is likelihood that criminal cases may be filed against the respondent apart from various other proceedings instituted by the petitioner herein before the Court at Udupi. It is also submitted that once the respondent is required to travel to attend the proceedings NC: 2024:KHC:9297 at Udupi, that would further expose the respondent for fresh proceedings that may be instituted by the petitioner on similar grounds only to harass the respondent.

4. Insofar as the apprehension of the respondent is concerned, needless to state that the counsel for the petitioner is to advise the petitioner appropriately. The apprehension of the respondent cannot have the effect of overriding the inconvenience made out by the petitioner.

5. This Court in the case Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407 at Paragraph No.15 has held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the NC: 2024:KHC:9297 parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiua Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr. MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

6. In light of the admitted position relating to distance of travel and also that the petitioner would find it difficult to leave her daughter alone who is pursuing PUC and noticing the law laid down in the case of Smt.M.V.Rekha (supra), which provides that convenience of the wife is an aspect that is to be taken note of while NC: 2024:KHC:9297 considering the transfer petitions, petition deserves to be allowed.

7. Accordingly, petition is allowed. Proceedings in M.C.No. 251/2020 pending on the file of the Principal Civil Judge and JMFC, Periyapatna, Mysuru, is withdrawn and the same is transferred to the I Additional Civil Judge and JMFC, Udupi. The records relating to M.C.No. 251/2020 to be transmitted forthwith to the I Additional Civil Judge and JMFC, Udupi. It is made clear that the Court at which the proceedings are transferred is not to insist on personal presence of the respondent except when required.

Sd/-

JUDGE VP

Sri. Himanshu Ashiya vs Smt. Neha Ashiya on 5 March, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

-1-

NC: 2024:KHC:9090
CRL.P No. 425 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 425 OF 2024

BETWEEN:

SRI HIMANSHU ASHIYA
S/O BHAGIRATH DHAN ASHIYA
AGED ABOUT 44 YEARS
R/AT C-406, RIVERSIDE PARK
VAISHALI TOWNSHIP, APMC LANE
VASNA, AHMEDABAD - 380 007
NOW AT BANGALORE.

...PETITIONER

(BY SRI RAJU C, ADV.)
AND :

SMT. NEHA ASHIYA
W/O HIMANSHU ASHIYA
AGED ABOUT 39 YEARS
R/AT V-302, ROHAN JHAROKA - 2
YEMALUR MAIN ROAD

Digitally signed
by B A KRISHNA
KUMAR
Location: HIGH
COURT OF
KARNATAKA

BENGALURU - 560 037.

...RESPONDENT

THIS CRL.P FILED U/S 482 CR.PC PRAYING TO QUASH THE
PROCEEDINGS INITIATED AGAINST THE PETITIONER IN
CRL.MISC.NO.32/2023 FILED UNDER SEC.12 OF D.V ACT 2005,
PENDING ON THE FILE OF THE I MMT COURT, MAYO HALL AT
BENGALURU PRODUCED AS ANNEXURE-A AND FURTHER

PROCEEDINGS IN THE SAID CASE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

-2-

NC: 2024:KHC:9090
CRL.P No. 425 of 2024

ORDER

1. Petitioner is before this Court under Section 482 Cr.PC with a prayer to quash the entire proceedings in Crl.Mis.No.32/2023 pending before Metropolitan Magistrate, Traffic Court-I, Mayohall, Bengaluru, initiated by the respondent herein under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act').
2. Heard the learned Counsel for the petitioner.
3. Learned Counsel for the petitioner having reiterated the grounds urged in the petition, submits that the respondent has not made any allegation about domestic violence and she has initiated the present proceedings at Bengaluru only to coerce and harass the petitioner. He submits that she has already initiated multiple proceedings before various forums, and therefore, the present proceedings cannot be maintained by her. Petitioner has been thrown out of his house and he has now taken shelter in his parents house.
4. From a reading of the averments made in the petition filed under Section 12 of the Act by the respondent, it is seen that marriage of the petitioner with the respondent was NC: 2024:KHC:9090 solemnized on 19.04.2007 at Jodhpur, Rajasthan, and they have a son from the wedlock who was born on 15.05.2015. It is alleged in the petition that the petitioner had abandoned his wife and child in the month of October 2021 and he has not been providing maintenance to them. The respondent has been taking care of the child who is studying in International School. The respondent is in possession of a residential premises which was purchased by the couple after marriage in the name of the respondent and attempt is being made by the petitioner to throw the respondent and her child from the house and sell the property in which the respondent is presently residing with her child. She has also stated that the petitioner has failed to take care of her child though she has been suffering from multiple illness. It is averred in the complaint that petitioner has been sending certain people near the residential property where the respondent is residing and this has created an apprehension in her mind that the petitioner is making attempt to sell the property and render her shelterless.
5. The averments made in the complaint are sufficient for the purpose of constituting domestic violence within the meaning of Section 3 of the Act. The respondent has prayed for NC: 2024:KHC:9090 several reliefs in the petition including payment of maintenance, protection of her

residential accommodation and compensation for medical expenses, etc. The petitioner instead of appearing before the Trial Court and filing objections to the said petition, has approached this Court with a prayer to quash the entire proceedings in Crl. Misc. No.32/2023.

6. In view of the aforesaid analysis of the matter, I am of the view that the prayer made by the petitioner cannot be granted. Accordingly, petition is dismissed.

Sd/-

JUDGE KK

S C Girish vs Smt Nirmala Y on 4 March, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

- 1 -

NC: 2024:KHC:9033
CRL.P No. 2329 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2024

BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 2329 OF 2023
BETWEEN:

S.C. GIRISH,
S/O CHIKKAKALAIH,
AGED ABOUT 42 YEARS,
SAMPAHAL DUDDA HOBLI,
GORVALE POST, MANDYA TALUK,
MANDYA DISTRICT - 571 405.

...PETITIONER
(BY SRI. VASUDEVA IYENGAR K.T, ADVOCATE)

AND :

SMT. NIRMALA Y,
W/O S.C. GIRISH,
AGED ABOUT 58 YEARS,

Digitally signed
by B A
KRISHNA

R/A NO.41/106, 4TH CROSS,
KUMAR
Location: HIGH
COURT OF
KARNATAKA
38TH MAIN, ROSE GARDEN,
6TH PHASE, J P NAGAR,
BANGALORE - 560 078.

...RESPONDENT
(BY SMT. K.P. YASHODHA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CRIMINAL PROCEDURE CODE PRAYING TO CALL FOR

RECORDS AND SET ASIDE THE ORDERS DATED 30.2.2020 AND
ORDERS PASSED BY THE HONOURABLE V ADDITIONAL
METROPOLITAN TRAFFIC COURT AT BANGALORE IN CRIMINAL

-2-

NC: 2024:KHC:9033
CRL.P No. 2329 of 2023

MISC., CASE NO.36/2022 IN ACCORDANCE WITH LAW TO
MEET THE ENDS OF JUSTICE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure, with a prayer to set-aside the Order dated 08.02.2023 passed by the Court of V Additional Metropolitan Traffic Court, in Misc. Case No.36/2022.

2. A perusal of the material on record would go to show that the impugned order has been passed on application Nos.2 to 4 filed by the petitioner herein under Section 340 read with Section 195 of Code of Criminal Procedure, Section 91 of Cr.P.C. and also Section 239 read with Section 235 of Cr.P.C. As against any order passed by trial court in proceedings under the provisions of Protection of Women from Domestic Violence Act, the remedy of appeal under Section 29 of the Act is available to the petitioner. The petitioner without availing the said NC: 2024:KHC:9033 remedy of appeal, is before this Court. Therefore, I pass the following :

ORDER Criminal Petition is disposed of with liberty to avail the alternate remedy available to the petitioner.

SD/-

JUDGE SNC CT: BHK

Mr. Vivek Anantha Nayak vs The State Of Karnataka on 29 February, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

-1-

NC: 2024:KHC:8485
CRL.P No. 7432 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO.7432 OF 2023

BETWEEN:

MR. VIVEK ANANTHA NAYAK,
S/O SUJIR ANANTHA NAYAK,
AGED ABOUT 51 YEARS,
R/AT NO. 209, BLOCK 2, HARSHA LANDMARK,
11TH MAIN ROAD, BRINDHAVAN LAYOUT,
HOYSALA NAGAR,
HORAMAVU, BENGALURU - 560 043.

...PETITIONER

(BY SRI. AJAY PRABHU M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY MANGALORE WOMEN POLICE STATION,
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,

Digitally
signed by V
KRISHNA

Location: High
Court of
Karnataka

BANGALORE - 560 001.

2. MR. S.R. KAMATH,
S/O LATE S.N.V. KAMATH,
AGED ABOUT 78 YEARS,
R/AT USHA NILAYA, ANEGUNDI ROAD,
BEJAI, MANGALURU - 575 004.

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP FOR R1;
R2 SERVED)

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NC: 2024:KHC:8485
CRL.P No. 7432 of 2023

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE FIR IN CR.NO.36/2023 REGISTERED FOR THE OFFENCE P/U/S 498A AND 406 OF IPC AND SEC.3,4 OF D.P ACT ON THE FILE OF THE COURT OF III JUDICIAL MAGISTRATE FIRST CLASS COURT MANGALURU AS PER DOCUMENT NO.1 AND ALL FURTHER INVESTIGATION PURSUANT TO DOCUMENT NO.1.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioner who is arraigned as accused in Crime No.36/2023 registered by Mangaluru Women Police Station, Mangaluru, D.K, for the offences punishable under Sections 498A & 406 and Sections 3 & 4 of Dowry Prohibition Act, 1961 is before this Court under Section 482 of Cr.P.C, with a prayer to quash the entire proceedings in the said case, which is pending against him before the Court of III JMFC, Mangaluru.

2. Heard learned counsel appearing for the petitioner and learned HCGP appearing for respondent No.1. Respondent No.2 - complainant, who is served in the matter has remained unrepresented.

NC: 2024:KHC:8485

3. FIR in Crime No.36/2023 was registered by Mangaluru Women Police Station on the complaint of respondent No.2 herein dated 19.05.2023. In the typed complaint dated 19.05.2023 lodged by respondent No.2 herein, who is the father of petitioner's wife Smt. Savita Kamat, it is alleged that, after the marriage of the complainant's daughter, she was not properly taken care in her matrimonial house and it is also alleged that at the time of marriage, the complainant had given dowry to the petitioner herein and in spite of the same, a demand was being made for payment of additional dowry. It is also alleged that the accused had misused the gold jewellery of his wife. The pan card of the complainant's daughter has been manipulated by the petitioner and the same is used by the accused as identity proof of his wife and for other financial transactions and therefore according to the complainant, the accused had committed criminal breach of trust. Challenging the FIR registered by the Mangaluru Women Police Station in Crime No.36/2023, the petitioner is before this Court.

NC: 2024:KHC:8485

4. Learned counsel appearing for the petitioner having reiterated the grounds urged in the petition submits that, undisputedly the petitioner's wife is residing in her parents' house from the year 2016 onwards. The petitioner and his wife Savita Kamat have filed two separate matrimonial cases before the jurisdictional family Court at Mangaluru for dissolution of their marriage. No allegations which are now found in the complaint are made in the matrimonial case filed by Savita Kamat. The complainant had earlier approached the police on 15.05.2023 and had lodged a complaint which was closed by the police after recording the statement of respective parties. Even in the said complaint, no such averments which are now made in the present complaint were made. He submits that, only with an intention to harass and coerce the petitioner for settling the demand made by Savita in her matrimonial case for payment of permanent alimony of Rs.2,50,00,000/-, the present complaint is filed.

NC: 2024:KHC:8485

5. Learned HCGP has opposed the petition. She submits that reading of averments made in the complaint prima-facie attracts the alleged offences. Investigation with regard to allegations made in the complaint is necessary. Accordingly, she prays to dismiss the petition.

6. The marriage of the petitioner with Savita Kamat who is the daughter of the complainant was solemnized on 29.04.2002. The material on record would go to show that since the petitioner's wife was suffering from depression, she was taken to Mangaluru for the purpose of treatment and ever since then she is in her parents' house. The complainant's daughter has filed a petition in M.C.No.563/2022 before the jurisdictional Family Court under Section 13(1),(ia),(ib) of the Hindu Marriage Act, 1955 with a prayer for dissolution of her marriage with the petitioner on the ground of cruelty and desertion and in the said proceedings, she also has prayed to award a permanent alimony of Rs.2,50,00,000/-. In the petition filed by Savita Kamat before the Family Court, NC: 2024:KHC:8485 there is no such allegation which is now made in the complaint by her father.

7. The complainant had earlier approached the police on 15.05.023 and had lodged a complaint. In the said complaint, he has stated that his daughter had approached the Family Court for divorce and also had initiated proceedings under the domestic violence act and the accused-petitioner was unnecessarily dragging the case without paying any maintenance or medical expenses since the year 2017 and therefore a request was made to do the needful in the matter. Except the same, there is no other allegation in the earlier complaint. The police after recording statement of both the parties have closed the said case. It is only thereafter the present complaint is filed making allegations against the petitioner, which are not found either in the petition filed by Savita before the Family Court seeking divorce or in the complaint filed by the complainant before the police on 15.05.2023.

NC: 2024:KHC:8485

8. Under the circumstances, a serious doubt arises with regard to genuineness and correctness of the allegations made in the complaint. The fact remains that the complainant's daughter Savita Kamat has been residing separately in her parents' house from the year 2016 onwards and the same is not in dispute. Under the circumstances, I find some force in the arguments addressed on behalf of the

petitioner that within an intention to wreak vengeance and arm twist the petitioner and coerce him for the purpose of consenting to pay permanent alimony to complainant's daughter, the present criminal proceedings has been initiated. Therefore, I am of the view that, continuation of criminal proceedings not only amounts to causing harassment to the petitioner who is practicing chartered accountant, but it would also amount to abuse of process of law.

9. Accordingly, the following:-

NC: 2024:KHC:8485 ORDER The Petition is allowed.

The entire proceedings in Crime No.36/2023 registered by Mangaluru Women Police Station, Mangaluru, D.K, for the offences punishable under Sections 498A & 406 of IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 is hereby quashed.

Sd/-

JUDGE NMS CT:SNN

Sri B V Mohan Babu vs Smt Bhavya A on 28 February, 2024

Author: H.P.Sandesh

Bench: H.P.Sandesh

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NC: 2024:KHC:8146
CRL.RP No. 14 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO.14 OF 2019

BETWEEN:

SRI B V MOHAN BABU
S/O VAJRAPPAA
AGED ABOUT 44 YEARS
NOW RESIDING AT R/A NO.832
GROUND FLOOR, L I G IST AND 2ND STAGE
15TH CROSS, 'B' SECTOR
YELAHANKA NEW TOWN
BENGALURU-560064
NOW CURRENTLY R/A NO.535
1ST FLOOR, 10TH 'B' CROSS
'B' SECTOR, YELAHANKA
BANGALORE-560064

Digitally signed
by SHARANYA T ...PETITIONER
Location: HIGH
COURT OF
KARNATAKA (BY SRI MITHUN GERAHALLI A, ADVOCATE)
AND :

SMT. BHAVYA A
W/O B V MOHAN BABU
AGED ABOUT 30 YEARS
R/A NO.1054, 1ST FLOOR
2ND MAIN, KHB INDUSTRIAL AREA
YELAHANKA NEW TOWN
BENGALURU-560064

... RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C
PRAYING TO QUASH THE ORDER PASSED BY THE
LEARNED LXXI ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BENGALURU (CCH-72) DATED 23.11.2018 IN
CRIMINAL APPEAL NO.1440/2017 AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

This matter is listed for admission. Heard the learned counsel appearing for the respective parties.

2. The factual matrix of the case of the respondent before the Trial Court while seeking the relief under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') that her marriage was solemnised in the year 2006 and thereafter she has joined the matrimonial home. It is also her case that her parents have paid an amount of Rs.5/- lakh as dowry to the petitioner herein and his family members and out of the said Rs.5/- lakh, 1.6 lakh was given through cheque bearing No542396 dated 16.08.2006 to the account of the father of the petitioner. It is also her case that all of them NC: 2024:KHC:8146 have residing in a matrimonial home situated at No.1054, 1st floor, 2nd Main, KHB Industrial area, Yelahanka New Town, Bengaluru. The said property is the self-acquired property of the husband and he had purchased the same vide sale deed dated 17.04.2003 and the said document is also marked as Ex.P14. A girl child was born out of the said wedlock. The husband and the family members did not visit the respondent to see the child. It was in fact the family members of the respondent who pleaded the petitioner and his family members to take back the respondent and her daughter. The petitioner denied to take back the respondent along his daughter till the respondent's parents gave a share of their house property in the name of the petitioner and his family members. It is also her case that family members have continued to treat her and her daughter in a heinous manner causing severe harassment and hence, case is also filed under Section 498A of IPC along with Section 3 and 4 of the Dowry Prohibition Act and the petition is also filed for the divorce by the petitioner herein. When such being the NC: 2024:KHC:8146 situation, the respondent filed the petition seeking protection under the DV Act.

3. The learned counsel for the respondent appeared and filed the objection statement denying the averments made in the C.Misc.No.459/2011 and the respondent herein was examined as PW1 and got marked the documents at Ex.P1 to P63. On the other hand, husband also examined as RW1 and also got examined two witnesses as RW2 and RW3 and got marked the documents at Ex.R1 to R19.

4. The Trial Court having considered the material available on record comes to the conclusion that there is a case under the DV Act since the petitioner herein and his family members even did not go to see the child when the child was born and the same is also evident from the record and also comes to the conclusion that the respondent is not having any separate residence and hence, allowed the petition filed under Section 12 of the DV Act and ordered to pay an amount of Rs.25,000/- per NC: 2024:KHC:8146 month towards maintenance and directed to pay 50% of the educational expenses of his minor child till she attain the age of majority from the date of petition and the respondent or their men are prohibited from causing interference for possession of the petitioner over No.1054, 1st Floor, 2nd Main, KHB Industrial Area, Yelahanka New Town, Bengaluru and also the respondent or their men are prohibited from committing any act of domestic violence upon the respondent herein. Being aggrieved by the said order, an appeal is preferred in Crl.A. No.1440/2017 and the First Appellate Court also on re-appreciation of both oral and documentary evidence placed on record comes to the conclusion that Trial Court has not committed any error in allowing the petition of the respondent and hence, dismissed the appeal. Being aggrieved by the concurrent finding of the Trial Court as well as the First Appellate Court, the present revision petition is filed before this Court.

NC: 2024:KHC:8146

5. The main contention of the counsel for the petitioner is that both the Courts have committed an error in appreciating the evidence on record. The counsel would vehemently contend that no material is placed before the Court to invoke Section 12 of the DV Act seeking a prohibitory order under Section 18, residence order under Section 19, monetary relief under Section 20 including household expenses. Even gone to the extent of granting an amount of Rs.25,000/- per month as maintenance though not granted any compensation. The counsel also would vehemently contend that the respondent has not produced any documentary evidence to establish the allegation of assault by the petitioner and his parents along with his sister on 21.08.2008 and the complaint was lodged on 29.11.2010 and case is registered for the offence punishable under Section 498A of IPC read with Section 3 and 4 of DV Act. The counsel would vehemently contend that both the Courts have failed to understand the intent of DV Act wherein the said Act applies only to aggrieved person who is victim of Domestic Violence and NC: 2024:KHC:8146 the virtue of which, she requires protection and where, she has been neglected to be maintained. Under such circumstances, not warranted to invoke Section 12 of DV Act. But here is the case that the petitioner is willing to take care of the respondent even ready to buy a house.

6. The counsel also would vehemently contend that when the petitioner was already gifted the property in favour of his sister and when the petitioner himself is not having any right to continue with the property and he is staying separately and even now also, he is ready to purchase a house but respondent has put a condition that the petitioner has to buy a house without any loan on the apprehension that the petitioner may purchase the property and may leave the respondent and there cannot be such apprehension. The petitioner is ready to make provision for the respondent for comfortable stay. It is also contended that both the Courts without considering the admission of the respondent that she was drawing the salary of Rs.23,000/-, awarded an amount of Rs.25,000/-

NC: 2024:KHC:8146 towards maintenance and the same is erroneous. The counsel also would vehemently contend that when revision petitioner is ready to take her back and provide her accommodation by purchasing the house, both the Courts ought not to have invoked the provisions of the DV Act and thereby, committed an error in allowing the petition of the respondent.

7. Per contra, the learned counsel appearing for the respondent would vehemently contend that both the Courts have taken note of the admission of the parties. It is the specific case of the respondent that when she gave birth to a girl child, none of the family members of the petitioner have visited her and same is also admitted in the evidence of RW1 and RW3 before the Trial Court and the same has been discussed by both the Courts and reasoned order has been passed. The counsel further submits that Section 498A case is registered and the same is also challenged and even discharge application is also filed and the same is also rejected and both the Courts NC: 2024:KHC:8146 taking note of the material available on record particularly the admission that when she gave birth to a girl child, none of the family members of the petitioner visited her and the same is elicited in the cross-examination of RW3 also that he himself and his son never visited the house of the respondent. Apart from that even admitted that after panchayath only she was taken back to the matrimonial home. But the fact that the respondent is staying in some of the portion of the premises of matrimonial home where she has resided after the marriage and the said fact is not in dispute. The counsel also submits that when the petitioner allowed his parents to stay in the very same building, they making an attempt to remove the respondent from the said residence and hence, the Court has to take note of the very intention of the revision petitioner. The Trial Court also taken note of the admission on the part of RW1 that he is drawing salary of Rs.1,70,000/- and awarded an amount of Rs.25,000/- towards maintenance to the respondent and also to take care of the daughter and other provision is made to meet

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NC: 2024:KHC:8146 50% of the educational expenses and also ordered not to interfere with the right of residence of the respondent thus, reasoned order is passed by the Trial Court and the same is confirmed by the First Appellate Court.

8. Having heard the learned counsel appearing for the respective parties, it discloses that no dispute that marriage was performed in the year 2006 and also the document at Ex.P14 clearly discloses that property was purchased in the name of the petitioner in the year 2003 itself that is prior to the marriage and now the contention is that very same property was gifted in favour of his sister in the year 2009 that is after the marriage of the respondent. When the respondent is residing in the matrimonial home after the marriage and also even material discloses that when RW1 and RW3 given admission that they did not visit the house of the respondent when she gave birth to a female child, the Court has to take note of the said fact into consideration. Apart from that criminal case also initiated against the

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NC: 2024:KHC:8146 petitioner and present petition is also filed and when the cases are pending against the petitioner, M.C. petition also filed by the petitioner seeking divorce and apart from that restitution of conjugal rights proceeding also initiated between the parties. Now, the contention that he will take care of the respondent and said contention cannot be accepted when all these material available on record.

9. The Trial Court also while considering the material available on record taken note of the admission on the part of the petitioner herein that he is drawing salary of Rs.1,70,000/- per month and out of that amount, only Rs.25,000/- was awarded in favour of the respondent and her daughter. The counsel for the respondent also submits that now the daughter is pursuing 11th standard and this petition was filed in the year 2011. Both the Courts taken note of the material available on record to invoke Section 12 of the DV Act and apart from that other aiding provision to give protection to her and to meet 50% of the educational expenses since an amount of

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NC: 2024:KHC:8146 Rs.25,000/- is awarded to meet the expenses of the wife as well as the child who is pursuing education. Hence, I do not find any error committed by both the Courts in considering the material available on record. Even regarding maintenance is concerned, inspite of evidence that she is earning Rs.23,000/-, the scope of the revision is also very limited. Only, if an order passed by the Trial Court and the First Appellate Court suffers from any legality and its correctness, under such circumstances, the Court can exercise the revisional jurisdiction. But in the case on hand, I do not find any error committed by the Trial Court even granting right of residence as well as maintenance as well as directing the petitioner to meet 50% of the educational expenses taking into note of the cost of the education and the First Appellate Court also confirmed the order of the Trial Court. Under such circumstances, I do not find any grounds to interfere with the findings of the Trial Court as well as the First Appellate Court by exercising the revisional powers and no grounds

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NC: 2024:KHC:8146 are made to admit the petition and to interfere with the finding of both the Courts.

10. In view of the discussions made above, I pass the following:

ORDER The revision petition is dismissed.

Sd/-

JUDGE SN

Ms. Sowmya V.N. (V.N. Roopa) vs Mr. Kiran N.R. (N.R. Arjun) on 28 February, 2024

-1-

NC: 2024:KHC:8210
WP No. 29324 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 29324 OF 2023 (GM-FC)

BETWEEN:

MS. SOWMYA V. N. (V.N. ROOPA),
W/O MR. KIRAN N. R.,
D/O NINGAPPA V. H.,
AGED ABOUT 36 YEARS,
OCC: ASSISTANT EXECUTIVE ENGINEER,
R/O NO.85, 5TH MAIN ROAD,
NEAR SUBBANNA GARDEN,
VIJAYANAGARA, BANGALORE-560 040.

NOW R/AT C/O LOKESH B. M.,
NO.5, B.M. VALLEY SCHOOL ROAD,
PANTRAPALYA, NAYANDAHALLI,
BANGALORE - 560 039.

...PETITIONER

(BY SMT. ANUPAMA HEGDE, ADVOCATE)

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA
AND:
MR. KIRAN N.R. (N.R. ARJUN),
S/O RAMACHANDRA,
AGED ABOUT 36 YEARS,
OCC: BUSINESS,
R/O NO.176, 1ST MAIN ROAD,
5TH CROSS, JYOTHI NAGAR,
CHANDRA LAYOUT,
BANGALORE - 560 040.

ALSO AT MR. KIRAN N.R.,
NIDUDI VILLAGE,
DODDAPURA POST,

-2-

NC: 2024:KHC:8210

TQ AND DIST: HASSAN - 573 118
PH NO.9743413360.

... RESPONDENT

(BY SMT. GEETHA DEVI M.P., ADVOCATE)

THIS WP IS FILED PRAYING TO CALL FOR RECORDS
MODIFY THE ORDER DATED: 13.10.2023 PASSED BY LEARNED
III ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT,
BANGALORE ON IA NO.IV IN G AND WC NO. 214/23 (AT
ANNEXURE-F) BY ALLOWING THE INTERIM APPLICATION (IA
NO. IV) FILED BY THE PETITIONER (AT ANNEXURE-C).

THIS PETITION, COMING IN THE 'FRESH MATTERS LIST',
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The present Writ Petition is filed seeking modification of the order passed on I.A.No.4 in G&WC.No.214/2023 dated 13.10.2023 by the III Additional Principal Judge, Family Court, Bengaluru.

2. The petitioner/mother has filed an application in I.A.No.4 seeking for grant of visitation rights to the minor daughter on every Saturday from 5:00 p.m. to Sunday 5:00 p.m. The marriage of the petitioner and the NC: 2024:KHC:8210 respondent was solemnised on 27.08.2017 and out of the wedlock, they are blessed with a female child who was born on 06.07.2018. Later, in view of the disputes between the petitioner and the respondent, they started residing separately from 18.05.2023. Thereafter, the petitioner/wife has filed MC No.3820/2023 seeking divorce on the ground of cruelty and she had also filed C.Misc.No.159/2023 under the Protection of Women for Domestic Violence Act against the respondent herein. Thereafter, she has filed G&WC No.214/2023 seeking custody of the child and in that she has filed I.A.No.2 of 2023 seeking interim custody of the child. Pending the same, she has filed I.A.No.4 seeking visitation rights. By way of the impugned order, the Court below had partly allowed the application observing as follows:

ORDER "I.A.No.4 filed by the petitioner under sec.12, of G&W Act, is hereby partly allowed.

The petitioner is permitted to visit the child on every Saturday and Sunday between 3-00 PM to 6-00 PM at Hasan in any public place nearby to the place of residence of Jhassica to enable the petitioner / mother to spend time with the child.

NC: 2024:KHC:8210 The petitioner / mother should facilitate the child to speak to her father / respondent during her interim custody period over phone, if the child wants to speak to the father.

The petitioner / mother shall not expose the child to the unhealthy or hazardous atmosphere and shall take constant care of the child as dutiful mother.

Petitioner / mother shall not move the child outside the city of Hasan.

The petitioner / mother shall not give ill advise to the child about the father and his family members and she should have regard to the likes and dislikes of the child considering the welfare and wellbeing of the child during her interim custody period.

The petitioner / mother shall inform the respondent immediately in case of any ill health of the child and shall provide requisite medical aid to the child forthwith and take care of the child as responsible and dutiful mother.

The petitioner / mother shall keep the respondent / father informed about the place where she is going to take the child during her interim custody period and shall exercise her visitation rights to the child in a peaceful, calm, conducive atmosphere without subjecting the child for unnecessary fear or trauma."

3. Learned counsel appearing for the petitioner submits that the petitioner being a mother, she has to spend more time with the girl. The mother is working in Bangalore and the child is staying in Hassan along with her grandmother. It is submitted that as on the date of the filing of the petition she was in Bangalore, thereafter she NC: 2024:KHC:8210 has been shifted to Hassan. It is also submitted that the child is a challenged child. It is submitted that the visitation time that was granted by the Court below on every Saturday and Sunday between 3:00 p.m. to 6:00 p.m. is not a reasonable and sufficient time for the mother. She is going all the way to Hassan from Bangalore and she is only being given three hours time. It is further submitted that the Court has imposed a condition that she should visit the child in a public place. It is submitted that she has a house which belongs to her father and she can as well take the child to the place. It is also submitted that in the last visits, the child has been attached to her and the bonding developed between the petitioner/mother and the child. In view of the same, the order passed by the Family Court has to be modified and she should be given visitation rights for the whole day on both Saturday and Sunday. Learned counsel submits that though this order is passed in IA No.4 it appears that the Court has passed an order in I.A.No.2 and 4.

NC: 2024:KHC:8210

4. Learned counsel appearing on behalf of the respondent/husband has filed the objections. She submits that as per the assessment report given by the All India Institute of Speech and Hearing, Mysore, the child is identified as having spoken language disorder with intellectual disability of three and a half years of age and child may need curricular support services higher primary level if

necessary. She submits that the father who is staying at Bangalore had to go to Mysore as the petitioner had taken the child to Mysore for the treatment and later when the petitioner left him, the child has been taken to Hassan along with the grandmother who has been taking care of her. It is submitted that, he was working earlier and as he was not in a position to spend much time with the child, he quit the job and now he is doing his own business so that he would have some free time to spend with her. It is submitted that whenever the mother comes to Hassan and exercise her visitation rights, child is becoming ill as she has been given all the street food and the ice creams which are not good for the child. It is NC: 2024:KHC:8210 further submitted that the child is very much attached to the grandmother and at night times her custody with the mother would not be in the interest of the minor girl who is a special child. It is further submitted that during her session of visitation rights, the petitioner went to the school and picked up fight with the teachers and the teachers in turn have warned the father not to create this kind of situation in the school. It is submitted that the wife is coming with two or three people and that is creating all the more nuisance and it is stated that the purpose of her visitation rights cannot be achieved in the presence of so many people around.

5. Learned counsel for the respondent further submits that arrangement that was made by the Court below is perfect, looking at the differently abled child and no modification is required in the interest of the child. It is stated that after the visitation rights, the child shows stubbornness, starts crying, escape behaviour etc. In response to that learned counsel appearing for the wife NC: 2024:KHC:8210 submits that what all that has been stated about how the mother is behaving while she is exercising the visitation rights is without any basis and only to prejudice the Court and deny her rights. According to the learned counsel for the petitioner, this behaviour of the child is only because of the separation from her mother.

6. Having heard the learned counsels on either side, perused the entire material on record. Learned counsel for the petitioner submitted that though this order is passed in IA No.4, the order reflects that the Court has passed an order in both I.A.Nos.2 and 4. This Court perused the same, the Court below has specifically passed an order in I.A.No.4 and the Court below has independently dealt with I.A.No.2 seeking interim custody.

7. In this case, there is no dispute about the fact that the child is a differently abled child and she has certain issues. She has been under constant monitoring and sessions from the doctors concerned. The Court NC: 2024:KHC:8210 below has already granted visitation rights to the mother from 3:00 p.m. to 6:00 p.m. on Saturday and Sunday. Both the parties have placed several claims against each other saying that according to the mother, she could not completely enjoy the visitation rights. According to the respondent/husband, the mother's behaviour is not correct and after the mother left, the behaviour of the child is different and they have filed certain documents before this Court by way of objections.

8. After hearing the submissions of both the counsels, the fact that remains is that the petitioner before this Court is the mother and the daughter is not a normal child. All said and done, the child equally requires the love and affection of the mother. However, she has been with the father and grandmother for a while. This Court cannot pass any order to completely detach her from the father

and grandmother which is not in the interest of the minor child and the paramount consideration of this Court is the welfare of the child.

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NC: 2024:KHC:8210

9. The Court below has granted visitation rights on Saturdays and Sundays in the duration of 3:00 p.m. to 6:00 p.m. In the considered opinion of this Court, it is not a reasonable time to develop bonding with the girl as rightly pointed by the learned counsel for the petitioner. According to the respondent, the girl has school on Saturday till 1:00 p.m. and she comes home at around 2:00 p.m. When it comes to Sunday, there is no school and on Saturday and Sunday she might be having therapy sessions and even if the therapy sessions are there, it would not be a hurdle if the mother accompanies the others to the therapy sessions along with the child.

10. In the light of the above discussion and in the interest of the child, this Court deems it appropriate to modify the order passed by the Court below in the following manner:

ORDER i. The Writ Petition is disposed off with the following observations.

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NC: 2024:KHC:8210 ii. The mother is permitted to visit the child on Saturday between 2:00 p.m. and 6:00 p.m. and if there are any therapy sessions on that day, she is permitted to accompany the father and grandmother to the session.

iii. On all Sundays, she can have the visitation rights between 9:00 p.m. and 6:00 p.m. iv. The petitioner/mother should facilitate the child to speak to her father/respondent during her interim custody period over phone, if the child wants to speak to the father.

v. The petitioner/mother shall not expose the child to the unhealthy or hazardous atmosphere and shall take constant care of the child as dutiful mother.

vi. Petitioner/mother shall not move the child outside the city of Hasan.

vii. The petitioner/mother shall not give ill advise to the child about the father and his family members and

- 12 -

NC: 2024:KHC:8210 she should have regard to the likes and dislikes of the child considering the welfare and wellbeing of the child during her interim custody period.

viii. The petitioner/mother shall inform the respondent immediately in case of any ill health of the child and shall provide requisite medical aid to the child forthwith and take care of the child as responsible and dutiful mother.

ix. The petitioner/mother shall keep the respondent/father informed about the place where she is going to take the child during her interim custody period and shall exercise her visitation rights to the child in a peaceful, calm, conducive atmosphere without subjecting the child for unnecessary fear or trauma.

x. The Court below has directed that the petitioner shall meet the child only in public place nearby to the residence of the child. As this court is granting

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NC: 2024:KHC:8210 if there is any house she takes on rent or any premises which belongs to her father she can take the child to that place.

xi. Out of the four Saturdays and Sundays, the petitioner is not permitted to exercise visitation rights on the third Saturday.

xii. Both the parties are at liberty to approach the Court below if there is any change of circumstances or the modification of order is required.

SD/-

JUDGE MEG

Smt. Sumaya W/O Abdul Latif Sutar vs Abdul Latif S/O Khajasab Sutar on 28 February, 2024

- 1 -

NC: 2024:KHC-D:4646
CP No. 100195 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL
CIVIL PETITION NO. 100195 OF 2023

BETWEEN:

SMT. SUMAYYA W/O. ABDUL LATIF SUTAR,
AGE ABOUT 23 YEARS,
OCC: HOUSEHOLD WORK AND STUDY,
R/O. BIJAPUR NOW AT-BARA IMAM GALLI,
WARD NO.9, JAMKHANDI,
TQ: JAMKHANDI, DIST: BAGALKOT-587301.

...PETITIONER

(BY SRI. ASHOK C. ANGADI, ADV. FOR
SRI. S. M. KALWAD, ADVOCATE)

AND:

ABDUL LATIF S/O. KHAJASAB SUTAR,
AGE: ABOUT 27 YEARS,

Digitally
signed by
ROHAN
ROHAN HADIMANI
HADIMANI T
T Date:
2024.03.01
11:37:15
+0530
BIJAPUR,
R/O. HUDCO S. R. COLONY,
DIST: VIJAYAPURA-586101.

...RESPONDENT
(BY SRI. AHAMED ALI RAHIMANSHA, ADV. FOR RESPONDENT)

THIS CIVIL PETITION IS FILED U/SEC.24 OF CPC, PRAYING TO
PASS AN APPROPRIATE ORDER TO TRANSFER THE CASE IN OS NO.
33/2023 PENDING ON THE FILE OF PRL. JUDGE, FAMILY COURT,
VIJAYAPURA TO OF PRL. CIVIL JUDGE (SR. DN), JAMKHANDI, IN THE

INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:4646

CP No. 100195 of 2023

ORDER

This petition is filed by the petitioner/wife seeking prayer to transfer O.S.No.33/2023 pending on the file of Prl. Judge Family Court, Vijayapura to Prl. Civil Judge (Sr.Dn) Jamakhandi.

2. Heard the arguments of learned counsel Shri. Ashok C. Angadi for Shri. M.S. Kalawad learned counsels appearing for petitioner and Shri.Ahamed Ali Rahimansha learned counsel for respondent.

3. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 10.02.2019 as per customs prevailing in their family. It is averred that the petitioner/wife has initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act 2005 by filing petition before the Prl. Civil Judge (Sr. Dn) Jamakhandi which was numbered as Crl.Misc No.112/2023. The said proceedings were initiated for seeking maintenance against the respondent/husband. During the pendency of the said NC: 2024:KHC-D:4646 proceedings, the respondent/husband has filed O.S.No.33/2023 pending on the file of Prl. Judge Family Court, Vijayapura seeking prayer for judgment and decree of Restitution of Conjugal Rights in favour of the respondent against the petitioner herein. Taking note of the nature of dispute between the parties, the distance between the two Courts and also taking note of the fact that the petitioner being the wife having minor child in her custody out of the wedlock. It would be just and appropriate to allow the petition. This Court taking note of the law laid down by the Hon'ble Apex Court in the case of Sumita singh Vs Kumar Sanjay and another reported in (2001) 10 SCC 41 is of the considered view that the petition deserves to be allowed.

4. Hence, the following:

ORDER i. Above petition is allowed.

NC: 2024:KHC-D:4646 ii. O.S. No.33/2023 pending on the file of Prl. Judge Family Court, Vijayapura is withdrawn from the file of the said Court and made over to the Prl. Civil Judge (Sr.Dn) Jamakhandi for trial in accordance with law.

Sd/-

JUDGE RKM

Abdul Hafiz vs Mrs Syeda Zaiba Firdous on 28 February, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

-1-

NC: 2024:KHC:8366
CRL.P No. 1730 of 2018
C/W CRL.P No. 1731 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF FEBRUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
CRIMINAL PETITION NO. 1730 OF 2018 (482)
C/W
CRIMINAL PETITION NO. 1731 OF 2018 (482)
IN CRL.P NO.1730/2018:

BETWEEN:

1. ABDUL HAFIZ
S/O ABDUL RAB,
AGED ABOUT 35 YEARS,
NO.94, EAST END MAIN ROAD,
JAYANAGAR, 9TH BLOCK,
BEHIND BUS STAND, BANGALORE.
2. SMT.AFROZ FATHIMA
W/O MOHAMMED AHMED
D/O ABDUL RAB,
AGED ABOUT 46 YEARS,
R/AT ADAM KHAN MOSQUE ROAD,
AGRAHARA, K.R.MOHALLA,

Digitally signed
by
NARAYANAPPA
LAKSHMAMMA
Location: HIGH

MYSURU CITY - 570 001.

...PETITIONERS

COURT OF
KARNATAKA

AND:

1. MRS. SYEDA ZAIBA FIRDOUS
D/O SYED ANWAR,
AGED ABOUT 25 YEARS,
R/AT D.NO.2159/2,
7TH CROSS (SOUTH),
SAWDAY ROAD, MANDI MOHALLA,

MYSORE - 570 001

... RESPONDENT

(RESPONDENT SERVED)

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NC: 2024:KHC:8366

CRL.P No. 1730 of 2018

C/W CRL.P No. 1731 of 2018

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE ENTIRE PROCEEDINGS PENDING AGAINST THE PETITIONERS NO.1 AND 2 IN CRL.MISC.NO.280/2016 PENDING ON THE FILE OF PRINCIPAL Ist ADDITIONAL CIVIL JUDGE AND JMFC, MYSURU U/S 12, 18, 19, 20, 22, 23 OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

IN CRL.P NO.1731/2018:

BETWEEN:

1. MOHAMMED ZAKAULLA
S/O LATE HUSSAIN SAB,
AGED ABOUT 61 YEARS,
NO.25,8TH "A" MAIN ROAD,
NEW GURAPPANA PALYA,
BANNERGHATTA ROAD,
BANGALORE.
2. SMT. KANEEZE FATHIMA
W/O MOHAMMED ZAKAULLA,
AGED ABOUT 56 YEARS,
NO.25,8TH "A" MAIN ROAD,
NEW GURAPPANA PALYA,
BANNERGHATTA ROAD,
BANGALORE.

... PETITIONERS

(BY SRI. G. A. SHREENIVASA, ADVOCATE)

AND:

MRS. SYEDA ZAIBA FIRDOUS
D/O SYED ANWAR,
AGED ABOUT 25 YEARS,
R/AT NO. D 2159/2
7TH CROSS, (SOUTH),
SAWDAY ROAD, MANDI MOHALLA,
MYSORE - 570 001.

... RESPONDENT

(RESPONDENT SERVED)

-3-

NC: 2024:KHC:8366

THIS CRL.P FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE ENTIRE PROCEEDINGS PENDING AGAINST THE PETITIONERS IN C.MISC.NO.280/2016 PENDING ON THE FILE OF PRINCIPAL I CIVIL JUDGE AND JMFC, MYSURU U/S 12,18,19,20,22,23 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for following reliefs:

(a) Allow the petition.

(b) To quash the entire proceedings pending against the petitioners No.1 and 2 in C.Misc.No.280/2016 pending on the file of Prl. I Addl. Civil Judge and JMFC, Mysuru u/s 12, 18, 19, 20, 22, 23 of the Protection of Women from Domestic Violence Act, 2005.

(c) Grant such other relief/relief's as this Hon'ble Court deems fit in the circumstances of the case in the ends of justice."

2. Sri.J.Srinivasa, learned counsel for the petitioners submits that complaint filed by the respondent against the petitioners has been withdrawn. Hence, NC: 2024:KHC:8366 petitioners are not interested in proceeding with the above matters.

3. Accepting the submission of learned counsel for the petitioners, petitions are dismissed as withdrawn.

Sd/-

JUDGE DR

Mr. Dinesh S vs Smt. Hemavathi J on 27 February, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

-1-

NC: 2024:KHC:8121
WP No. 28719 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO. 28719 OF 2023 (GM-RES)

BETWEEN:

MR. DINESH S
S/O SRI SHIVANNA S.N
AGED ABOUT 43 YEARS
R/AT NO 94, 3RD MAIN ROAD
MUNESHWARA BLOCK
MAHALAKSHMI LAYOUT
BANGALORE - 560 086.

...PETITION
(BY SRI KRISHNA MURTHY N, ADV.)
AND :

SMT. HEMAVATHI J
W/O SRI DINESH S
AGED ABOUT 32 YEARS
PRESENTLY R/AT NO 78
5TH CROSS, SRIGANDHA KAVALU

Digitally signed
by NANDINI
MS
Location: HIGH
COURT OF
KARNATAKA

L.N. RESIDENCY, NAGARABHAVI
BANGALORE - 560 072.

...RESPONDENT

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA R/W SEC.482 OF CR.P.C. PRAYING TO CALL FOR RECORDS ON THE FILE OF MMTC-III AT BANGALORE IN CRL. MISC. NO. 86/2023 CULMINATING IN TO THE ORDER

THIS PETITION, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:8121
WP No. 28719 of 2023

ORDER

1. Learned Counsel for the petitioner submits that this petition may be dismissed as withdrawn with liberty to the petitioner to prefer an appeal against the impugned order as provided under Section 29 of the Protection of Women from Domestic Violence Act, 2005. He has also filed a memo to the said effect.
2. The aforesaid submission and the memo filed by the learned Counsel for the petitioner is placed on record.
3. Petition is dismissed as withdrawn with liberty as prayed for.
4. All contentions urged in this petition are kept open.

SD/-

JUDGE KK

Sri. Deepak Kumar Gupta vs Smt. Sunakshi Charan Pahari on 26 February, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

-1-

NC: 2024:KHC:7848
CRL.P No. 13418 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 13418 OF 2023

BETWEEN:

1. SRI DEEPAK KUMAR GUPTA
AGED ABOUT 34 YEARS
S/O SRI. ARUN KUMAR GUPTA
R/AT NO.1-004, BERN PALMS
48/1, KUDLU MAIN ROAD
HOSAPALYA, SINGASANDRA
BENGALURU - 560 068.
2. SMT. NITA GUPTA
AGED ABOUT 58 YEARS
W/O SRI. ARUN KUMAR GUPTA
R/AT NO.27, 20TH MAIN
8TH BLOCK, KORAMANGALA
BANGALORE - 560 095.
3. SRI ARUN KUMAR GUPTA
AGED ABOUT 60 YEARS
S/O LATE GULAB CHAND
R/AT NO.I-004, BERN PALMS

Digitally signed by

NANDINI MS

Location: HIGH

COURT OF

KARNATAKA

48/1, KUDLU MAIN ROAD

HOSAPALYA, SINGASANDRA

BENGALURU - 560 068.

...PETITIONERS

(BY SRI SIDDHARTH SUMAN, ADV.)

AND:

SMT. SUNAKSHI CHARAN PAHARI
AGED ABOUT 32 YEARS
W/O SRI DEEPAK KUMAR GUPTA
R/AT NO.I-004, BERN PALMS
48/1, KUDLU MAIN ROAD
HOSAPALYA, SINGASANDRA
BENGALURU - 560 068.

...RESPONDENT

(BY SRI. JAYAKUMAR N D., ADVOCATE)

-2-

NC: 2024:KHC:7848
CRL.P No. 13418 of 2023

THIS CRL.P FILED U/S 482 CR.PC PRAYING TO SET ASIDE THE ORDER DATED 30.10.2023 IN CRL.MISC.NO.76/2021 PASSED BY THE HONBLE MMTC COURT IV BENGALURU (MMTC-VI) BENGALURU AGAINST THE PETITIONERS i.e ANNEXURE-A.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This petition under Section 482 of Cr.P.C. is filed with a prayer to set-aside the order dated 30.10.2023 passed in Crl.Misc.No.76/2021 by the Court of Metropolitan Magistrate Traffic Court - VI, Bengaluru.
2. The impugned order has been passed by the jurisdictional Court on an application filed by the respondent under Section 20 of the Protection of Women from Domestic Violence Act, 2005. As against the impugned order, the petitioners have an alternate remedy of preferring an appeal under Section 29 of the aforesaid Act. Therefore, this petition cannot be entertained. Accordingly, the petition is dismissed with liberty to the petitioner to prefer an appeal as provided under Section 29 of the Act.

Sd/-

JUDGE DN

Smt. Sharadha Anvekar vs Sri. Pankaj Anvekar on 23 February, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

-1-

NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REV.PET FAMILY COURT NO. 104 OF 2018

C/W

REV.PET FAMILY COURT NO. 134 OF 2017

REV.PET FAMILY COURT NO. 131 OF 2019

IN RPFC NO. 104/2018

BETWEEN:

SMT. S.R. ASHWINI
W/O. G HARISH,
OCC: HOUSEHOLD,
D/O. NETRA,

Digitally signed by

JAI JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

R/O. CHOWDESHWARI COLONY,
NEAR RAILWAY GATE,.
ROAD LEADS TO HONNALI,
SHIMOGA CITY - 577 201

(BY SRI. PRASAD B S, ADVOCATE)

...PETITIONER

AND :

G. HARISH
S/O. GUDDALLI GIDDAPPA,
R/O. KAZIKOPPALU,
S.S. ROAD,
SHIKARIPURA TOWN - 577 427,
SHIMOGA DISTRICT.

-2-

NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

... RESPONDENT

(RESPONDENT NOTICE H/S V/O DATED 03.06.2021)

THIS RPFC IS FILED UNDER SEC. 19[4] OF FAMILY COURT ACT AGAINST THE ORDER DATED 20.07.2017 PASSED IN C. MISC. NO. 128/2016 ON THE FILE OF THE PRL. FAMILY COURT, SHIVAMOGGA. DISMISSING THE PETITION FILED UNDER SEC. 125 OF CR. P. C. FOR MAINTENANCE.

IN RPFC NO. 134/2017

BETWEEN:

1. SMT. SHASHIKALA
W/O B. S. MAHADEVAPPA,
AGED ABOUT 36 YEARS,

MANUKUMARA B. M
S/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,
(DIED ON 11-09-2014)

2. APOORVA
D/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,

ALL ARE RESIDING AT:
YADAHALLI VILLAGE,
JAYAPURA HOBLI,
MYSORE TALUK
MYSORE.

... PETITIONERS

(BY SRI. RUPESH KUMAR S, ADVOCATE)

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NC: 2024:KHC:14466

RPFC No. 104 of 2018

C/W RPFC No. 134 of 2017

RPFC No. 131 of 2019

AND:

1. B.S. MAHADEVAPPA
S/O SRI. SHIVANNA,
AGED ABOUT 43 YEARS,
RESIDING AT D. NO. 629,
7TH "E" CROSS,
HEBBAL 1ST STAGE,
MYSURU - 570 016.

WORKING AS TEACHER AT
GOVERNMENT HIGHER PRIMARY SCHOOL,
CHINNANAYAKANAHALLI,
NEAR KARIGATTA,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT.

...RESPONDENT

(BY SRI. SATHYA. D. ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY
COURT ACT., AGAINST THE JUDGMENT DATED 14.02.2017
PASSED IN C. MIS. NO. 558/ 2013 ON THE FILE OF THE PRL.
JUDGE, FAMILY COURT, MYSURU, PARTLY ALLOWING THE
PETITION FILED UNDER SEC. 125 OF Cr. P. C., FOR
MAINTENANCE.

IN RPFC NO. 131/2019

BETWEEN:

1. SMT. SHARADHA ANVEKAR
W/O PANKAJ ANVEKAR,
AGED ABOUT 34 YEARS,

-4-

NC: 2024:KHC:14466

RPFC No. 104 of 2018

C/W RPFC No. 134 of 2017

RPFC No. 131 of 2019

2. BABY SNEHAL
D/O PANKAJ ANVEKAR
AGED ABOUT 3 YEARS,
REP. BY ITS NATURAL GUARDIAN

SMT. SHRADHA ANVEKAR

BOTH RESIDING AT
#973, 4TH CROSS,
SATHAGALLI
MYSORE - 570 019.

(BY SRI. MOHAN B.K, ADVOCATE)

...PETITIONERS

AND:

SRI. PANKAJ ANVEKAR
S/O SURENDRA ANVEKAR
AGED ABOUT 36 YEARS,
R/AT #418, GANDHINAGAR
NAIKWADI PLOT, UPLAI ROAD,
NEAR GODOWN, BARSHI - 413 411
SOLAPUR DISTRICT
MAHARASTRA - 413 411

...RESPONDENT

(NOTICE SERVED)

THIS RPFC FILED UNDER SEC. 19(4) OF FAMILY COURT
ACT AGAINST THE ORDER DATED 17.05.2019 PASSED IN C.
MIS. NO. 133/2018 ON THE FILE OF THE I ADDITIONAL
PRINCIPAL JUDGE, FAMILY COURT MYSURU, PARTLY
ALLOWING THE PETITION FILED UNDER SEC. 125 OF CR. PC.,
FOR MAINTENANCE.

THESE PETITIONS, COMING ON FOR FINAL HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

ORDER

All the three petitions are filed by the wife calling in question the judgment and award passed by the Family Courts in dismissing the petitions filed under Section 125 of Cr.P.C. filed by the respective petitioners - wife on the ground that in spite of decree of restitution of conjugal rights is passed against the wife but the wife did not join companionship of the respondent - husband. Therefore, the Family Courts have dismissed the petitions filed for maintenance.

2. Though the above said three petitions are ordered under different facts and circumstances but one common fact involved in these cases are that the petitioners were constrained to live separately from the respondents - husband on the ground that the respondents - husband have subjected the petitioners - wife to cruelty and ill-treatment. Therefore, the petitioners are living separately and

thus, filed claim petitions praying for maintenance by invoking provisions of Section 125 of NC: 2024:KHC:14466 Cr.P.C. by filing respective petitions. The Family Courts have dismissed the petitions filed under Section 125 of Cr.P.C. on the ground that respondents - husband have filed petitions invoking the provision of Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and decree is passed for restitution of conjugal rights. But the petitioners - wife did not join companionship of the respondents - husband. Therefore, on this ground that the wife did not join matrimonial home of the husband, which amounts to voluntary desertion, hence, the Family Court has concluded that the petitioners - wife are not entitled for maintenance. Accordingly, dismissed the petitions.

3. Heard the arguments from both sides and perused the records.

4. Learned counsel for the petitioners - wife in all the cases submitted that Section 125 of Cr.P.C. is the beneficial legislation achieving social justice to destitute wife, children and old aged parents. When on certain NC: 2024:KHC:14466 allegations that the respondents - husband have subjected the petitioners - wife into cruelty, ill-treatment and harassment to bring dowry amounts constraining the petitioners - wife to live separately. The wife is entitled social protection and maintenance under Section 125 of Cr.P.C., which is enacted for providing maintenance to the wife. Therefore, submitted that just because a decree for restitution of conjugal rights is obtained by husband and wife do not join husband that does not mean that the wife is not entitled for maintenance from the husband. He also submitted that just because the wife does not join companionship of husband in spite of decree of restitution of conjugal rights, that does not amount to voluntary desertion by the wife. Therefore, submitted that the Family Court without following principles of law laid down by the Hon'ble Supreme Court and the spirit of enacting Section 125 of Cr.P.C. has erroneously dismissed the petition filed for maintenance. He further submitted that when a divorced wife is entitled for maintenance but denying maintenance to the destitute wife though divorce NC: 2024:KHC:14466 is not obtained is amounting to discrimination among the wife. Therefore, irrespective of decree of restitution of conjugal rights, the wife is entitled for maintenance. Therefore, prays to allow the petitions and grant maintenance to wife.

5. On the other hand, learned counsel for the respondents - husband submitted that when a decree for restitution of conjugal rights is obtained by the husband and if wife does not join matrimonial house of the husband, it amounts to voluntary desertion by wife which attracts the provisions of Section 125 (4) of the Cr.P.C. Therefore, the Family Court is justified in dismissing the claim petitions. Hence prays to dismiss the petitions.

6. Learned counsel for the respondents - husband places reliance on the following judgments:-

i. Sri.Subbaraya V. Manja vs. Smt.Rajalaksmi and another in R.P.F.C.No.110/2012 dated 24.04.2014 (subbaraya case);

NC: 2024:KHC:14466 ii. In the case of Khursheed Ahmad vs. Smt.Zakira reported in 2006 SCC Online P & H 900 (Khursheed Ahmad case);

7. Upon hearing arguments from the respective learned counsels following point arises for my consideration:-

Whether, under the facts and circumstances involved in the case, upon the allegation made by wife against her husband that he had subjected the wife to cruelty, harassment, torture and wife decides to live separately from the husband and file petition under section 125 of Cr.P.C. for maintenance; then husband files petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and obtains decree for restitution of conjugal rights against the wife; then in spite of decree for restitution of conjugal rights, the wife do not join matrimonial home of husband, whether, it amounts to voluntary desertion by wife under section 125(4) of Cr.P.C. thus not entitling wife for claiming maintenance against husband as per section 125(1) of Cr.P.C.?

8. The facts in all the cases are that petitioners are wife of respondents respectively. The relationship

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NC: 2024:KHC:14466 between the parties as wife and husband is not disputed. On certain allegations made against the respondents, the petitioners have left matrimonial home and started living separately. The allegations made by the petitioners against the respondents are that the respondents have subjected the petitioners to cruelty, ill-treatment, harassment etc. The petitioners have felt that there is threat to their lives. Therefore, they have started to reside separately. When the wife has become destitute for sustaining in life and to lead normal life, to get fundamental necessity i.e., food, cloth, medicine etc., they have filed petitions seeking maintenance under Section 125 of Cr.P.C. The Family Court has dismissed the petitions filed under Section 125 of Cr.P.C. on the reason that the respondents have obtained decree for restitution of conjugal rights and the wife did not join matrimonial home of the respondents - husband, hence it amounts voluntary desertion under sub-section (4) of section 125 of Cr.P.C and thus, they are not entitled for maintenance and accordingly, dismissed the petition.

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9. The Hon'ble Supreme Court in the case of Rajnesh vs. Neha and another reported in AIR 2021 SC 569, has laid down law in so far as granting maintenance under Section 125 of Cr.P.C., which are as follows:-

"2. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to

frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on Maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to

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NC: 2024:KHC:14466 dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that:

"Nothing in this article shall prevent the State from making any special provision for women and children."

5. Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

6. Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors¹. held that the object of maintenance laws is:

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections (1978) 4 SCC 70(AIR 1978 SC 1807)

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NC: 2024:KHC:14466 like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 ("SMA"), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act") which provide a statutory remedy to women, irrespective of the

religious community to which they belong, apart from the personal laws applicable to various religious communities.

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself.

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NC: 2024:KHC:14466 In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In *Bhagwan Dutt v Kamla Devi*(1975) 2 SCC 386: (AIR 1975 SC 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."

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NC: 2024:KHC:14466 (emphasis supplied) Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the

date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

In Chaturbhuj v. Satabai (2008) 2 SCC 316:

(AIR 2008 SC 530) this Court held that the object of

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NC: 2024:KHC:14466 maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuwan Mohan Singh v Meena and Ors (2015) 6 SCC 353: (AIR 2014 SC 2875). this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able -bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim u/S 125 Cr.P.C. came up for the consideration in

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NC: 2024:KHC:14466 Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr. (2011) 1 SCC 141: (2011 Cri LJ 96 (SC)) before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife," to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for grant of maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of

marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125

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NC: 2024:KHC:14466 Cr.P.C. such strict standard of proof is not necessary."

10. Section 125 of Cr.P.C. is a social beneficial legislation. The object of this provision is to achieve social justice by providing social security to the destitute. Even divorced wife is entitled for maintenance as per Section 125 of Cr.P.C. as per law laid down by the Hon'ble Supreme Court in the catena of decisions. When this being the facts, if husband obtains decree for restitution of conjugal rights and wife refuses to join companionship of husband, whether it takes away right of wife for claiming maintenance is the question to be considered in the present case.

11. Section 9 of the Hindu Marriage Act, 1955 reads as follows:-

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition

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NC: 2024:KHC:14466 and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

12. As per sub-section (4) of section 125 of Cr.P.C., if there is no reason for the wife to desert husband or wife deserts husband voluntarily on her own will then the wife is not entitled for maintenance under Section 125 of Cr.P.C. After passing decree for restitution of conjugal rights and if wife does not join husband whether amounts to voluntary desertion or what are the reasons for the wife to reside separately is to be considered.

13. These type of situations are to be considered on the aspect that what compels the wife to leave matrimonial home of husband. There are so many facts compelling wife to leave matrimonial home of husband such as, ill-treatment, cruelty, dowry harassment, threat to life etc. No women in Bharatha leaves voluntarily matrimonial home of husband. The bondage between husband and wife is sacred one as per Hindu traditions and customs. The solemnization of marriage between a

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NC: 2024:KHC:14466 male and female among Hindus is not a mere contract but it is a sacred celebration of union of two souls. When such being the traditions we have, if a wife decides to leave husband and takes decision to start residing independently/separately from husband, then what mental agony might have occurred to the wife and apprehending feelings of wife, what bad experiences the wife must have undergone to take such extreme step of residing separately from husband is not a simple factor just to give maintenance or not to give maintenance. Hindu concept of marriage:

Marriage as a sacrament Among Hindus.--Manu laid down:

Wife is a divine institution given by Gods.

One should not think that one has obtained her by choice.

Her unity (with her husband) is established by the Vedas A woman is half of her husband and completes him (Ardha Narishwara).

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NC: 2024:KHC:14466 A Women must be honoured by her father, brother, husband and brother-in-law, who desires their own welfare. Where women are honoured, the Gods are pleased, but where they are not honoured, no sacred rites yield any reward.

Neither by sale nor desertion can a wife be released from her husband, this, we understand is the law ordained by the creator in former times.

Let mutual fidelity continue till death, this in few words, may be considered as the highest Dharma of husband and wife.

Let a man and woman united in marriage constantly be beware lest at any time disunited, they violate their mutual fidelity.

The objects of a Hindu marriage have been to have offsprings, to be able to perform religious rites and sacrifices (which a man can perform only along with his wife) and to have highest conjugal happiness and heavenly bliss for the ancestors and oneself the achievement of all these objectives are dependent upon the wife. Manu declared that a man who has not taken a wife has not fully perfected his personality and must be regarded as incomplete and imperfect. His personality is developed and completed, manu declared, only upon the union of his wife, himself

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NC: 2024:KHC:14466 and his offspring. This is the significance of unity of personality of man and his wife under Hindu law. Thus, according to the

Grihyasutras, marriage is not a contract but a spiritual union, a holy bond of unity. The words addressed to the bride after the saptapadi are:

Into my will, I take thy heart, thy mind shall follow mine.

Probably, no other people have endeavoured to idealize the institution of marriage as the Hindus have done. Even in the patriarchal society of the Rig vedic Hindus, marriage was considered as a sacramental union. And it continued to be so in the entire Hindu period, and even in our contemporary world most Hindus regard their marriage as a sacrament. We find the following passage in the Manu Smriti:

I hold your hand for saubhagya (good luck) that you may grow old with your husband, you are given to me by the just, the creator, the wise and by the learned people.

Manu enjoins on the wife that she should become a paturnuvarte, i.e., she should follow the same principles as her husband. According to the Rig Veda:

Be thou mother of heroic children, devoted to the Gods, be

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NC: 2024:KHC:14466 thou Queen in thy Father-in-law's household. May all Gods unite the hearts of us two into one.

Wife is also ardhangini (half of man). According to the satpatha Brahmana: "The wife is verily the half of the husband. Man is only half not complete until he marries." The Taittiriya samhita is to the same effect, "half is she of the husband that is wife". From this notion of unity of personality of husband and wife, mutual fidelity of husband and wife is implied. Manu declared that mutual fidelity between husband and wife is implied. Manu declared that mutual fidelity between husband and wife is the highest Dharma. Manu further said that once a man and a woman are united in marriage, they must see that there are no differences between them, and that they remain faithful to each other.

In the Shastra, husband and wife are referred to by several names. The husband is known as Bharta, because he is to support his wife, he is also known as pati, because he is to protect her. On the other hand, the wife is known as jaya, because one's own self is begotten on her. According to the Mahabharata, by cherishing woman, one but virtually worships the goddess of prosperity herself; by afflicting her, one but afflicts the goddess of prosperity. A man's half is

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NC: 2024:KHC:14466 his wife: the wife is her husband's best of friends; the wife is the source of Dharma, Artha and Kama, and she is also the source of Moksha. In the Ramayana, the wife is said to be the very soul of her husband. She is grihani (the lady of the house) in her husband's household, sachiva (wise counsellor), sakhi (confidante) to her husband and dearest disciple of her husband in the pursuit of art. She is grihalakshmi, ardhangini and samarajyi.

Thus, Hindus conceived of marriage as a sacramental union, as a holy union. This implies several things. Firstly, the marriage between man and woman is of religious or holy character and not a contractual union. For a Hindu marriage is obligatory, for begetting son, for discharging his debt to his ancestors and for performing religious and spiritual duties. Wife is not merely a grihapatni but also dharmapatni and sahadharmini.

(courtesy - Law of Marriage & Divorce, Paras Diwan, Seventh Edition, LexisNexis Publications, page No.14, 15, 16.)

14. Therefore, marriage among Hindus is a sacrament; celebration of union of two souls and is not a contract. When there is such a divine concept of institution of marriage among

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NC: 2024:KHC:14466 Hindus, and wife leaves her parents home and decides to join her husband's matrimonial home, with all dreams of building her life, if the wife decides to live separately from the husband, then one can apprehend how much mental agony, frustration, hardship has undergone in the mind of wife.

15. No woman in Bharat for flimsy reasons takes decision to live separately from husband. There must have been some reason compelling the wife to reside separately. Therefore, just because there is a decree of restitution of conjugal rights is obtained by the husband, how far it is correct to compel the wife to join matrimonial home of husband when wife is going to turmoil. Therefore, these two aspects are to be considered under the principles of decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, vis- à-vis., right of claiming maintenance under section 125 of the Cr.P.C. is to be appreciated.

16. The Delhi High Court in the case of Babita vs. Munna Lal in Crl.Rev.P.1001/2018 decided on 22.08.2022 has held that mere existence or non compliance of decree of restitution of conjugal rights by itself could not debars

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NC: 2024:KHC:14466 or disentitles the wife within the meaning of section 125 of Cr.P.C. from getting an order of maintenance. The Division Bench of Punjab and Haryana High Court in the case of Ravi Kumar vs. Santosh Kumari, in Crl.R.44 of 1992 decided on 22.04.1997 has held at paragraph No.11 as follows:

(11) We, therefore, answer the question of law referred to us as follows:-

1) The wife against whom a decree of restitution of conjugal rights has been passed by the Civil court, shall not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights before the Civil court, a specific issue has been framed that whether without sufficient reason, the wife refuses to live with the husband, and the parties have been given an opportunity to lead evidence and thereafter specific findings are recorded by the Civil Court on this issue;

2) But in case the husband has got an ex parte decree of restitution of conjugal rights from the Civil Court, such decree shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure;

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3) In case the decree for restitution of conjugal rights has been obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree ipso facto, shall not disentitle the wife to her right of maintenance and in that case, the husband will have to approach the Court of the Magistrate under sub-section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125 Cr.P.C.;

And

4) The wife against whom decree of restitution of conjugal rights in the manner

indicated in our first conclusion has been passed, will get the right to claim maintenance from the husband with effect from the date when she is granted divorce and she will continue getting this maintenance till she re-marries.

17. The High Court of Himachal Pradesh in the case of Hem Raj vs. Urmila Devi and others, reported in 1996 SCC Online HP 116, has held that if husband obtains a decree for restitution of conjugal rights, and if wife does not joint the husband, then the wife is not entitled for maintenance under section 125 of Cr.P.C.

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18. This Court, in the case of Sri Subbaraya B. Manja vs. Smt.Rajalakshmi, in RPFC No.110/2012 decided on 24.04.2014, has held that once Civil Court has found in a contesting proceedings on the

basis of the evidence that the wife had no just or reasonable cause to withdraw her company from the husband, she cannot claim maintenance under section 125 of Cr.P.C. in spite of there is a decree for restitution of conjugal rights.

19. Therefore, just because the decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act is obtained by the husband, and if wife does not join matrimonial home of husband, whether it amounts that the wife has voluntarily deserted the husband without any just and reasonable cause and left the husband is a question to be answered.

20. There are various reasons for the wife to desert her husband. Some reasons can be expressed and some cannot be expressed. The reasons for desertion to be expressed are mental or physical violence or both on the

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NC: 2024:KHC:14466 wife like torture, ill-treatment, making insult etc.,. Some reasons cannot be expressed open to the society like impotency or any other diseases of the husband, which cannot be expressed to anyone else in the society, even some times to her parents also. Therefore, there are various reasons for the wife to take extreme step of desertion to reside separately from the husband. When the wife becomes destitute, she has to struggle hard for her maintenance.

21. Therefore under these circumstances if husband files a petition under section 9 of the Hindu Marriage Act, for restitution of conjugal rights, then some times it may not be possible for the wife to contest the said petition due to her economical incapacity. Even though the wife contest the petition, it is not possible for her to express all the sensitive matters/issues to the Court openly for the reason that to preserve prestige and honour of the family of both her parents and her husband's. Though the petition is contested and decree for restitution of conjugal rights is

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NC: 2024:KHC:14466 passed, but compelling the wife to join her husband is nothing but putting forcefulness on the mind of the wife to join the husband infringing her privacy and her willingness and wish. Therefore, no force can be applied either to husband or wife to join the spouses. The existence of wife is not a mere physical body, but it is about feelings, mental decision, physical decision, emotions and thus, wife is not a mere physical entity like any other object. Wife is a human being. Hence she cannot be forced to join her husband against her will and wish. Though the husband obtains a decree for restitution of conjugal rights, but it cannot be executed unless wife is willing to join the company of husband on her own will and wish.

22. Section 9 of the Hindu Marriage Act is legislated with above object making a platform to make to unite husband and wife. But just because decree of conjugal rights is granted, it cannot be executed against the feelings and emotions of wife compelling her to join husband, as the wife is not a mere object of physical

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NC: 2024:KHC:14466 entity. Though the Civil Court while considering the petition for restitution of conjugal rights can see only evidence produced before it, but some things cannot be expressed openly. Even wife takes a prudent approach, which is better to say, which is not better to depose all the things before the Court to preserve prestige and honour of the family of both the husband and wife. Therefore, just because restitution of conjugal rights decree is passed, such a decree cannot be executed, otherwise it amounts to put pressure and compulsion on the mind of the wife to join the husband and in this regard the wife's status has become the only physical entity. This is forcing the wife to join the husband on the basis of a decree for restitution of conjugal rights is nothing but violation of Article 21 of the Constitution of India. The wife is not mere animal existence or a physical body entity. It is a law of nature that no one can be forced to commit the act against his/her own will. Therefore just because the decree of restitution of conjugal rights is obtained, though it is contested, not only ex parte decree and when the wife do

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NC: 2024:KHC:14466 not join the matrimonial home of the husband, it does not amount to voluntary desertion of husband as per sub-section 4 of section 125 of Cr.P.C.

23. There is a recent development that section 9 of the Hindu Marriage Act is used as a platform to obtain a decree of divorce before invoking section 13 of the Hindu Marriage Act to make a ground that the wife has deserted husband voluntarily. Therefore, the petition under section 9 of the Hindu Marriage Act is filed and obtained a decree of restitution of conjugal rights, then, if the wife does not join the husband, it enables the husband to raise a ground of desertion by the wife in divorce petition. Therefore, just because there is a decree of restitution of conjugal rights, it always does not mean that really husband wants wife. Therefore, law is being used in this context also. Hence it cannot always be said that just because contested petition for decree of conjugal rights proves that wife has on her own willingness refused to join the companionship of the husband. Therefore, though the decree for restitution of

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NC: 2024:KHC:14466 conjugal rights is passed irrespective of ex parte or contesting the petition, the destitute wife is entitled for maintenance under section 125 of Cr.P.C.

24. Even a divorced wife is entitled for maintenance. When the divorced wife is entitled for maintenance, why not for a destitute wife during subsisting marriage. Therefore it is discrimination that divorced wife is entitled for maintenance and a destitute wife just because living separately is not entitled for maintenance. Thus, it is violative of Article 14 of the Constitution of India.

25. When a petition is filed under section 9 of the Hindu Marriage Act, the proceedings is summary in nature and moreover the Civil courts are having normal tendency to allow the petition for restitution of conjugal rights. Decreeing the petition for restitution of conjugal rights is a general

rule. Dismissal of petition is exception. When the proceedings under section 9 of the Hindu Marriage Act is summary in nature, and though whatever evidence is

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NC: 2024:KHC:14466 produced before the Civil Court, decree of restitution of conjugal rights will be passed. As above stated, just decree for restitution of conjugal rights is passed, it cannot be forced the wife to join the husband. External force cannot be applied compelling the wife to join the husband against her will.

26. The Hon'ble Supreme Court has upheld the constitutional validity of section 9 of Hindu Marriage Act. In the case of Smt.Saroj Rani vs. Sudarshan Kumar Chadha, reported in (1984) 4 Supreme Court Cases 90, it is held that the concept of restitution of conjugal rights is based on the idea that marriage is a sacrament and it is the duty of the parties to live together. Section 9 of the Hindu Marriage Act is an aid to make an attempt to re-union husband and wife through the process of law. Section 9 of the Hindu Marriage Act is for protecting institution of marriage and its objective is to maintaining marital harmony. Thus, its constitutional validity is upheld by the Hon'ble Apex Court.

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27. Section 9 of the Hindu Marriage Act emphasizing its role in promoting reconciliation and preservation of marriage. The Court cannot force the wife to stay with the husband when wife makes allegation against the husband. The restitution of conjugal rights simply means that the Court can order the parties to resume cohabitation and marital relations, but it cannot force to live together against her will. Some rights and obligations emerge as a result of union like the right to stay together and to engage in sexual intercourse with each other and to fulfill the marital obligations. Thus, basically the rights that emerging from marital bond which have to be fulfilled by both the parties and if they do not do so, naturally, they can be persuaded as a permissive compulsion by the course to do so. Therefore, a decree of restitution of conjugal rights passed by the Civil Court is nothing but a pursuing compulsion on the part of the wife or husband to join respectively their matrimonial home, but it is not a compulsorily compelling the wife to join the

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NC: 2024:KHC:14466 husband. This is the concept of restitution of conjugal rights.

28. In the case of Sunita Kachwaha vs. anil Kachwaha, reported in (2014) 16 SCC 715, the Apex Court had occasion to observe how to exercise the discretionary jurisdiction under Section 125 of the Cr.P.C. It was observed as under:

"6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the Respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

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7. Inability to maintain herself is the pre- condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

29. Therefore the Court has to be cautious in determining maintenance to wife under section 125(1) of Cr.P.C. holding that non compliance of decree of restitution of conjugal rights will be held as a ground for not granting maintenance under section 125(4) of Cr.P.C. While doing so, the conduct of the wife as to whether the wife had sufficient reason not to stay with the husband or husband creating such circumstances that the wife is not able to stay with him have to be carefully observed by the Court. These circumstances have to be considered while

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NC: 2024:KHC:14466 deciding the petition under section 125 of Cr.P.C. for maintenance but not solely being influenced by the decree of restitution of conjugal rights. As discussed above, there cannot be forceful circumstances for the wife to join the husband that may not be coming in the proceedings under section 9 of the Hindu Marriage Act. Therefore the Court has to consider the case in summary way and observe what are the compelling circumstances to reside separately and to decide the petition filed for maintenance.

30. Therefore, granting the decree for restitution of conjugal rights to the husband, ifso facto shall not debar the wife from claiming maintenance. Therefore, section 125 of Cr.P.C. and section 9 of the Hindu Marriage Act are to be interpreted for which reason and object they are enacted. Here, while considering the case for grant of maintenance, the purposeful interpretation shall be made. While interpreting, applying section 9 of the Hindu Marriage Act and section 125 of Cr.P.C, both the provisions are meant for achieving social justice.

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NC: 2024:KHC:14466 Protection and preservation of institution of marriage is also social justice. Therefore, just because the decree of restitution of conjugal rights is granted and the same is not complied with by the wife, that cannot defeat the social justice given to the wife and the way of law has been provided to the wife under section 125 of Cr.P.C. Therefore, these two legislatures shall be interpreted achieving social justice in general and social protection to wife.

31. As observed above, sometimes section 9 of the Hindu Marriage Act is a tool for husband to negate maintenance to the wife and sometimes making a platform to obtain decree of divorce. Therefore, for this reasons also just because the decree of restitution of conjugal rights is passed and wife is not willing to join the husband, it does not always amount to voluntary refusal of wife to join the husband. Therefore the petition filed under section 125 of Cr.P.C. are to be dealt with independently whether the wife is entitled for maintenance or not. The Courts

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NC: 2024:KHC:14466 while considering the proceedings under section 125 Cr.P.C., has to conduct independent enquiry by appreciating the evidence which is before the Court to reach conclusion whether wife makes out a ground and fulfill conditions for grant of maintenance. There is nothing in law to bar grant of maintenance under section 125 of Cr.P.C. in case a decree of restitution of conjugal rights is possessed by the husband. There is no express bar to grant maintenance to the wife against whom a decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act has been passed, therefore there is no bar to entertain the petition for grant of maintenance.

32. The decree for restitution of conjugal rights at the hands of the husband at the most enures him to take defence in the proceedings initiated by wife under section 125 of Cr.P.C., but for the Court it shall not be a sole factor to refuse grant of maintenance to wife. Therefore the petition filed under section 125 of Cr.P.C. can be considered on its own and independently after receiving

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NC: 2024:KHC:14466 evidence on record, but without being influenced by the decree of restitution of conjugal rights.

33. Another aspect is that as observed above, if the non compliance of decree of restitution of conjugal rights, it may result into divorce by taking a ground by the husband. It is settled law that even divorced wife is entitled to claim maintenance. Therefore, it is improper and unfair to deny maintenance to wife when she becomes destitute. Accordingly the point for consideration is answered that though there is decree of restitution of conjugal rights against wife and wife does not join the matrimonial home of the husband, that does not amount to voluntary refusal/desertion of husband, barring to claim maintenance under section 125 of Cr.P.C.

34. In these cases the petitions filed by wife were dismissed solely on the reason that the husband has obtained decree of restitution of conjugal rights and wife did not join the husband, therefore amounting to voluntary desertion of husband by wife, hence, wife is not entitled

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NC: 2024:KHC:14466 for maintenance under section 125 of Cr.P.C. These findings and conclusions of the Family Courts are hereby set aside. Therefore in these three petitions wife is entitled for maintenance.

35. Now let me consider the quantum of maintenance to be granted in each case as follows:

RPPC No.104/2018.

36. In the present case the relationship between the petitioner and respondent as wife and husband is not disputed. It is also not disputed that the petitioner is legally wedded wife of the respondent. It is alleged that the relationship between the petitioner and respondent was strained. Therefore she filed petition under section 125 of Cr.P.C. for maintenance and that is dismissed. For the above stated reasons, the reasons assigned by the Family Court dismissing the petition are set aside. Thus the petitioner being wife of the respondent and is a destitute wife is entitled for maintenance and quantified as follows.

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NC: 2024:KHC:14466

37. The petitioner has claimed maintenance of Rs.10,000/- per month from the respondent. It is borne out from the records that the respondent husband was in the process of solemnizing second marriage with another woman. Therefore the petitioner has filed suit in O.S.No.721/2014, on the file of IV Addl. Civil Judge, Shivamogga for permanent injunction restraining the respondent to solemnize second marriage and it is stated that the said suit is pending. Therefore when this being the fact, it probablizes the fact that the respondent has tried to solemnize second marriage with another woman. It means that the respondent is a financially capable person to maintain second wife and why not legally wedded wife-petitioner. This is not controverted by the respondent. Therefore, considering the entire case on its preponderance of probabilities, the respondent shall pay maintenance to the wife. It is the duty and also pious obligation to maintain the wife and children. Here wife alone has filed petition for maintenance. The respondent being husband shall not take any excuse not to maintain

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NC: 2024:KHC:14466 his wife. Therefore it is hereby ordered the respondent shall pay maintenance amount of Rs.10,000/- per month to the petitioner from the date of petition till the life time of petitioner wife or till she re-marries. Therefore the petition in RPPC No.104/2018 is liable to be

allowed accordingly.

38. In the present case the petitioners are wife and two minor children of the respondent. The relationship between the parties is not disputed. At the time of filing the petition, the 2nd petitioner son was alive and he died on 11.09.2014 during the pendency of the petition. Therefore the Family Court has not granted maintenance to the 2nd petitioner. The Family Court has rejected the petition filed by the 1st petitioner wife and granted maintenance of Rs.6,000/- per month to the 3rd petitioner daughter till she get married.

39. The Family Court has rejected the maintenance to the 1st petitioner wife on the reason that the 1st

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NC: 2024:KHC:14466 petitioner wife is doing coolie work in the agricultural lands and also grazing cattle and hence is earning. Also another reason for rejection of maintenance to the wife is that she has not joined the husband in spite of decree of restitution of conjugal rights.

40. Just because the 1st petitioner wife goes for coolie work, the work in agricultural land and grazing cattle that does not mean that the wife is capable to earn and it is not the reason to shirk the responsibility of the husband to maintain the wife. When the wife become destitute, inevitably the wife has to work for her livelihood and for feeding the children. Therefore this does not mean that the respondent is not liable to pay maintenance. The wife and children could not await decree from the Family Court granting maintenance. Therefore for satisfying starvation of herself and children, inevitably without any alternative way, wife starts to work and therefore this is not the reason holding that the husband is not liable to

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NC: 2024:KHC:14466 pay maintenance. Therefore this approach of the Family Court is hereby set aside.

41. The respondent is proved to be teacher working in a Government Higher Primary School. Ex.P.5 is the certificate issued by the Block Education Officer, Srirangapattana, stating that the respondent husband is a Government Teacher. Ex.P.6 is the school fees paid receipts paid by the 1st petitioner giving education to her children. Further, Ex.P.7 to P.17 are the RTC extracts which prove the father of respondent is owner of agricultural land in which the respondent is having share definitely. Exs.P.18 to P.24 are the school fees paid receipts paid by the 1st petitioner wife of her children education. Therefore, when this being the evidence produced by the petitioner, it is proved that the 1st petitioner is wife and petitioners No.2 and 3 are children and respondent is working as a teacher in the Government Higher Primary School. It is defence of the respondent that the 1st petitioner's parents are financially potential persons

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NC: 2024:KHC:14466 and thus the 1st petitioner is not entitled for maintenance from the respondent. Just because the parents or other relatives of the 1st petitioner have entered into agreement of development of their land, how this is concerned to the 1st petitioner in order to negate the petitioner to claim maintenance is not forthcoming. The parents of 1st petitioner may be financially potential persons, but that does not mean that the 1st petitioner is not entitled for maintenance from the husband. Inevitably the 1st petitioner after desertion started to live along with her parents and the parents and other relatives may be financially potential persons, but that cannot be the reason to shirk the responsibility to pay maintenance to the wife.

42. Ex.R.14 is the salary certificate of respondent showing gross salary of Rs.29,638/- . The respondent might have obtained loan such as housing loan, personal loan and other loans that would ultimately to the benefit of the respondent and therefore whatever instalments to be paid towards such loans and deductions might have been

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NC: 2024:KHC:14466 made in the salary slip of the respondent, that cannot be deducted while considering the quantum of maintenance. Ex.R.52 is the copy of sale deed of site, which proves that the respondent has purchased site in Mysuru City. The respondent might have availed loan for purchasing the said site and is paying instalments towards repayment of the said loan. But whatever instalments are paying and made deductions in the salary slip, that cannot be deducted while considering the quantum of maintenance to be determined, payable to the wife, for the reason that those loans availed or any deductions are made are ultimately to the benefit of the respondent. Therefore, considering the evidence that the respondent is a Government employee, working as a teacher in the Government Higher Primary School and as per Ex.R.14 salary certificate, issued by the Block Education Officer, Srirangapattana stating that the respondent was receiving gross salary of Rs.29,638/- as on 14.09.2015, though the deductions are shown as Rs.19,074/- and take home

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NC: 2024:KHC:14466 salary is Rs.10,564/-, such deductions cannot be considered for determining the quantum of maintenance.

43. In certain circumstances the husband makes arrangement for more quantum of deductions by creating artificial deductions so as to show lesser take home salary for the purpose of negating compensation to the wife or an attempt to make awarding lesser quantum of maintenance. Only the tax collected towards income tax and professional tax are to be deducted. Whatever the other deductions are ultimately to the benefit of the husband. Therefore, after deductions in the salary slip towards KGID, GPF, LIC, society loan, SBI loan, cannot be deducted for the purpose of quantifying the maintenance. Therefore, considering the gross salary is Rs.29,638/- and the respondent being Government servant is having other facilities and perks such as medical reimbursement, etc., therefore, for the purpose of quantifying the maintenance, gross salary minus tax paid towards income tax and professional tax is considered. Accordingly it is ordered

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NC: 2024:KHC:14466 that the respondent husband shall pay maintenance amount of Rs.10,000/- to the 1st petitioner wife and Rs.8,000/- per month to the 3rd petitioner daughter who is studying, from the date of petition till her life time in the case of 1st petitioner or she remarries and till marriage in the case of the 3rd petitioner daughter. Therefore, the petition filed by the petitioners in RPFC No.134/2017 is liable to be allowed accordingly.

RPFC No.131/2019.

44. In this case the relationship of the parties as 1st petitioner is wife and 2nd petitioner is minor daughter of the respondent is not disputed. The Family court has granted maintenance of Rs.7,000/- per month only to the 2nd petitioner daughter, but rejected claim of maintenance to the 1st petitioner wife on the ground that the 1st petitioner wife is working. The Family Court has observed and came to the conclusion that since the 1st petitioner has not honoured the decree of restitution of conjugal rights obtained by the respondent husband, and the

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NC: 2024:KHC:14466 petitioners have left the matrimonial home of the respondent, therefore rejected the claim of the 1st petitioner and granted maintenance of Rs.7,000/- per month to the 2nd petitioner daughter. The Family Court has observed that before the marriage the 1st petitioner might have been working but there is no evidence to show that as on the date of filing the petition the 1st petitioner was working and having source of income. PW.1 in her evidence deposed that she is doing fashion designing course. Just because the 1st petitioner was pursuing fashion designing course, that does not mean that the 1st petitioner wife is working and earning income and it is not the reason for shirking responsibility of the respondent husband to maintain the wife and child.

45. Upon considering the evidence on record and averments taken in the petition and statement of objection of the respondent, it is proved that the 1st petitioner is not working and does not have any source of income. Whereas it is case of the respondent husband that he is an engineer

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NC: 2024:KHC:14466 working at Mahindra Tech Company at Pune and receiving lucrative salary. The respondent has taken contention that he has purchased a plot in Pune for Rs.44,00,000/- out of his savings. Therefore, this proves that the respondent is a financially capable person. Therefore, upon considering the entire case on all its preponderance of probabilities, in the background of their pleadings and averments in the petition and admissions made in the statement of objections and evidence on record, it is proved that the respondent is an engineering graduate working in a private company and when he was able to purchase plot worth of Rs.44,00,000/- in Pune, which proves the financial capacity of the respondent. Though for the sake of assumption respondent might have purchased property worth of Rs.44,00,000/- by raising loan, unless having capacity to repay the loan either by way of interest or by equal monthly instalments, the respondent husband could not

have ventured to purchase the plot worth of Rs.44,00,000/- . Therefore, this shows the financial capacity of the respondent. Therefore, the respondent

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NC: 2024:KHC:14466 husband is liable to pay maintenance. Considering the factors discussed above, it is hereby ordered that the respondent to pay maintenance amount of Rs.25,000/- to the 1st petitioner wife and Rs.10,000/- to the 2nd petitioner daughter from the date of petition till the lifetime of the 1st petitioner wife or she remarries and till the marriage in the case of 2nd petitioner daughter.

46. Therefore, for the aforesaid reasons, the petitions filed by the wife and children above stated are liable to be allowed. Hence, I proceed to pass the following:

ORDER

- i) All the three revision petitions are allowed.
- ii) The order dated 20.07.2017, passed in Crl.Misc.No.128/2016, by the Family Court, Shivamogga, is hereby set aside.
- iii) The Crl.Misc.No.128/2016, on the file of the Family Court, Shivamogga, is hereby allowed.

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NC: 2024:KHC:14466

iv) It is hereby ordered that the respondent husband in Crl.Misc.No.128/2016 (RPFC No.104/2018) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the petitioner from the date of filing of the petition till the life time of petitioner wife or till she re-marries.

v) The order dated 14.02.2017, passed in Crl.Misc.No.558/2013, by the Prl. Judge, Family Court, Mysuru, is hereby modified.

vi) It is hereby ordered that the respondent husband in Crl.Misc.No.558/2013 (RPFC No.134/2017) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the 1st petitioner wife and Rs.8,000/- (Eight Thousand Rupees) per month to the 3rd petitioner daughter, from the date of filing of the petition till her life time in the case of 1st petitioner or she re-marries and till the marriage in the case of the 3rd petitioner daughter.

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NC: 2024:KHC:14466

vii) The order dated 17.05.2019, passed in Crl.Misc.No.133/2018, by the I Addl. Prl. Judge, Family Court, Mysuru, is hereby modified.

viii) It is hereby ordered that the respondent husband in Crl.Misc.No.133/2018 (RPFC No.131/2019) shall pay maintenance amount of Rs.25,000/- (Twenty-Five Thousand Rupees) per month to the 1st petitioner wife and Rs.10,000/- (Ten Thousand Rupees) per month to the 2nd petitioner daughter, from the date of filing of the petition till the lifetime in the case of the 1st petitioner wife or she re-marries and till the marriage in the case of 2nd petitioner daughter.

ix) No order as to costs.

Sd/-
JUDGE

MH

Smt Shashikala vs B S Mahadevappa on 23 February, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REV.PET FAMILY COURT NO. 104 OF 2018

C/W

REV.PET FAMILY COURT NO. 134 OF 2017

REV.PET FAMILY COURT NO. 131 OF 2019

IN RPFC NO. 104/2018

BETWEEN:

SMT. S.R. ASHWINI
W/O. G HARISH,
OCC: HOUSEHOLD,
D/O. NETRA,

Digitally signed by

JAI JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

R/O. CHOWDESHWARI COLONY,
NEAR RAILWAY GATE,.
ROAD LEADS TO HONNALI,
SHIMOGA CITY - 577 201

(BY SRI. PRASAD B S, ADVOCATE)

...PETITIONER

AND :

G. HARISH
S/O. GUDDALLI GIDDAPPA,
R/O. KAZIKOPPALU,
S.S. ROAD,
SHIKARIPURA TOWN - 577 427,
SHIMOGA DISTRICT.

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

...RESPONDENT
(RESPONDENT NOTICE H/S V/O DATED 03.06.2021)

THIS RPFC IS FILED UNDER SEC. 19[4] OF FAMILY COURT ACT AGAINST THE ORDER DATED 20.07.2017 PASSED IN C. MISC. NO. 128/2016 ON THE FILE OF THE PRL. FAMILY COURT, SHIVAMOGGA. DISMISSING THE PETITION FILED UNDER SEC. 125 OF CR. P. C. FOR MAINTENANCE.

IN RPFC NO. 134/2017

BETWEEN:

1. SMT. SHASHIKALA
W/O B. S. MAHADEVAPPA,
AGED ABOUT 36 YEARS,

MANUKUMARA B. M
S/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,
(DIED ON 11-09-2014)

2. APOORVA
D/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,

ALL ARE RESIDING AT:
YADAHALLI VILLAGE,
JAYAPURA HOBLI,
MYSORE TALUK
MYSORE.

...PETITIONERS

(BY SRI. RUPESH KUMAR S, ADVOCATE)

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NC: 2024:KHC:14466
RPFC No. 104 of 2018

AND:

1. B.S. MAHADEVAPPA
S/O SRI. SHIVANNA,
AGED ABOUT 43 YEARS,
RESIDING AT D. NO. 629,
7TH "E" CROSS,
HEBBAL 1ST STAGE,
MYSURU - 570 016.

WORKING AS TEACHER AT
GOVERNMENT HIGHER PRIMARY SCHOOL,
CHINNANAYAKANAHALLI,
NEAR KARIGATTA,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT.

... RESPONDENT

(BY SRI. SATHYA. D. ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY COURT ACT., AGAINST THE JUDGMENT DATED 14.02.2017 PASSED IN C. MIS. NO. 558/ 2013 ON THE FILE OF THE PRL. JUDGE, FAMILY COURT, MYSURU, PARTLY ALLOWING THE PETITION FILED UNDER SEC. 125 OF Cr. P. C., FOR MAINTENANCE.

IN RPFC NO. 131/2019

BETWEEN:

1. SMT. SHARADHA ANVEKAR
W/O PANKAJ ANVEKAR,
AGED ABOUT 34 YEARS,

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NC: 2024:KHC:14466

RPFC No. 104 of 2018

C/W RPFC No. 134 of 2017

RPFC No. 131 of 2019

2. BABY SNEHAL
D/O PANKAJ ANVEKAR
AGED ABOUT 3 YEARS,
REP. BY ITS NATURAL GUARDIAN
SMT. SHRADHA ANVEKAR

BOTH RESIDING AT
#973, 4TH CROSS,
SATHAGALLI
MYSORE - 570 019.

...PETITIONERS

(BY SRI. MOHAN B.K, ADVOCATE)

AND:

SRI. PANKAJ ANVEKAR
S/O SURENDRA ANVEKAR
AGED ABOUT 36 YEARS,
R/AT #418, GANDHINAGAR
NAIKWADI PLOT, UPLAI ROAD,
NEAR GODOWN, BARSHI - 413 411
SOLAPUR DISTRICT
MAHARASTRA - 413 411

...RESPONDENT

(NOTICE SERVED)

THIS RPFC FILED UNDER SEC. 19(4) OF FAMILY COURT ACT AGAINST THE ORDER DATED 17.05.2019 PASSED IN C. MIS. NO. 133/2018 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT MYSURU, PARTLY ALLOWING THE PETITION FILED UNDER SEC. 125 OF CR. PC., FOR MAINTENANCE.

THESE PETITIONS, COMING ON FOR FINAL HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

ORDER

All the three petitions are filed by the wife calling in question the judgment and award passed by the Family Courts in dismissing the petitions filed under Section 125 of Cr.P.C. filed by the respective petitioners - wife on the ground that in spite of decree of restitution of conjugal rights is passed against the wife but the wife did not join companionship of the respondent - husband. Therefore, the Family Courts have dismissed the petitions filed for maintenance.

2. Though the above said three petitions are ordered under different facts and circumstances but one common fact involved in these cases are that the petitioners were constrained to live separately from the respondents - husband on the ground that the respondents - husband have subjected the petitioners - wife to cruelty and ill-treatment. Therefore, the petitioners are living separately and thus, filed claim petitions praying for maintenance by invoking provisions of Section 125 of NC: 2024:KHC:14466 Cr.P.C. by filing respective petitions. The Family Courts have dismissed the

petitions filed under Section 125 of Cr.P.C. on the ground that respondents - husband have filed petitions invoking the provision of Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and decree is passed for restitution of conjugal rights. But the petitioners - wife did not join companionship of the respondents - husband. Therefore, on this ground that the wife did not join matrimonial home of the husband, which amounts to voluntary desertion, hence, the Family Court has concluded that the petitioners - wife are not entitled for maintenance. Accordingly, dismissed the petitions.

3. Heard the arguments from both sides and perused the records.

4. Learned counsel for the petitioners - wife in all the cases submitted that Section 125 of Cr.P.C. is the beneficial legislation achieving social justice to destitute wife, children and old aged parents. When on certain NC: 2024:KHC:14466 allegations that the respondents - husband have subjected the petitioners - wife into cruelty, ill-treatment and harassment to bring dowry amounts constraining the petitioners - wife to live separately. The wife is entitled social protection and maintenance under Section 125 of Cr.P.C., which is enacted for providing maintenance to the wife. Therefore, submitted that just because a decree for restitution of conjugal rights is obtained by husband and wife do not join husband that does not mean that the wife is not entitled for maintenance from the husband. He also submitted that just because the wife does not join companionship of husband in spite of decree of restitution of conjugal rights, that does not amount to voluntary desertion by the wife. Therefore, submitted that the Family Court without following principles of law laid down by the Hon'ble Supreme Court and the spirit of enacting Section 125 of Cr.P.C. has erroneously dismissed the petition filed for maintenance. He further submitted that when a divorced wife is entitled for maintenance but denying maintenance to the destitute wife though divorce NC: 2024:KHC:14466 is not obtained is amounting to discrimination among the wife. Therefore, irrespective of decree of restitution of conjugal rights, the wife is entitled for maintenance. Therefore, prays to allow the petitions and grant maintenance to wife.

5. On the other hand, learned counsel for the respondents - husband submitted that when a decree for restitution of conjugal rights is obtained by the husband and if wife does not join matrimonial house of the husband, it amounts to voluntary desertion by wife which attracts the provisions of Section 125 (4) of the Cr.P.C. Therefore, the Family Court is justified in dismissing the claim petitions. Hence prays to dismiss the petitions.

6. Learned counsel for the respondents - husband places reliance on the following judgments:-

i. Sri.Subbaraya V. Manja vs. Smt.Rajalaksmi and another in R.P.F.C.No.110/2012 dated 24.04.2014 (subbaraya case);

NC: 2024:KHC:14466 ii. In the case of Khursheed Ahmad vs. Smt.Zakira reported in 2006 SCC Online P & H 900 (Khursheed Ahmad case);

7. Upon hearing arguments from the respective learned counsels following point arises for my consideration:-

Whether, under the facts and circumstances involved in the case, upon the allegation made by wife against her husband that he had subjected the wife to cruelty, harassment, torture and wife decides to live separately from the husband and file petition under section 125 of Cr.P.C. for maintenance; then husband files petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and obtains decree for restitution of conjugal rights against the wife; then in spite of decree for restitution of conjugal rights, the wife do not join matrimonial home of husband, whether, it amounts to voluntary desertion by wife under section 125(4) of Cr.P.C. thus not entitling wife for claiming maintenance against husband as per section 125(1) of Cr.P.C.?

8. The facts in all the cases are that petitioners are wife of respondents respectively. The relationship

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NC: 2024:KHC:14466 between the parties as wife and husband is not disputed. On certain allegations made against the respondents, the petitioners have left matrimonial home and started living separately. The allegations made by the petitioners against the respondents are that the respondents have subjected the petitioners to cruelty, ill-treatment, harassment etc. The petitioners have felt that there is threat to their lives. Therefore, they have started to reside separately. When the wife has become destitute for sustaining in life and to lead normal life, to get fundamental necessity i.e., food, cloth, medicine etc., they have filed petitions seeking maintenance under Section 125 of Cr.P.C. The Family Court has dismissed the petitions filed under Section 125 of Cr.P.C. on the reason that the respondents have obtained decree for restitution of conjugal rights and the wife did not join matrimonial home of the respondents - husband, hence it amounts voluntary desertion under sub-section (4) of section 125 of Cr.P.C and thus, they are not entitled for maintenance and accordingly, dismissed the petition.

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NC: 2024:KHC:14466

9. The Hon'ble Supreme Court in the case of Rajnesh vs. Neha and another reported in AIR 2021 SC 569, has laid down law in so far as granting maintenance under Section 125 of Cr.P.C., which are as follows:-

"2. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the

date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on Maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to

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NC: 2024:KHC:14466 dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that:

"Nothing in this article shall prevent the State from making any special provision for women and children."

5. Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

6. Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors¹. held that the object of maintenance laws is:

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections (1978) 4 SCC 70(AIR 1978 SC 1807)

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NC: 2024:KHC:14466 like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 ("SMA"), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself.

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NC: 2024:KHC:14466 In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In *Bhagwan Dutt v Kamla Devi*(1975) 2 SCC 386: (AIR 1975 SC 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."

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NC: 2024:KHC:14466 (emphasis supplied) Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

In Chaturbhuj v. Sitabai (2008) 2 SCC 316:

(AIR 2008 SC 530) this Court held that the object of

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NC: 2024:KHC:14466 maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuwan Mohan Singh v Meena and Ors (2015) 6 SCC 353: (AIR 2014 SC 2875). this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able -bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim u/S 125 Cr.P.C. came up for the consideration in

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NC: 2024:KHC:14466 Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr. (2011) 1 SCC 141: (2011 Cri LJ 96 (SC)) before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife," to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for grant of maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125

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NC: 2024:KHC:14466 Cr.P.C. such strict standard of proof is not necessary."

10. Section 125 of Cr.P.C. is a social beneficial legislation. The object of this provision is to achieve social justice by providing social security to the destitute. Even divorced wife is entitled for maintenance as per Section 125 of Cr.P.C. as per law laid down by the Hon'ble Supreme Court in the catena of decisions. When this being the facts, if husband obtains decree for restitution of conjugal rights and wife refuses to join companionship of husband, whether it takes away right of wife for claiming maintenance is the question to be considered in the present case.

11. Section 9 of the Hindu Marriage Act, 1955 reads as follows:-

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition

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NC: 2024:KHC:14466 and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

12. As per sub-section (4) of section 125 of Cr.P.C., if there is no reason for the wife to desert husband or wife deserts husband voluntarily on her own will then the wife is not entitled for maintenance under Section 125 of Cr.P.C. After passing decree for restitution of conjugal rights and if wife does not join husband whether amounts to voluntary desertion or what are the reasons for the wife to reside separately is to be considered.

13. These type of situations are to be considered on the aspect that what compels the wife to leave matrimonial home of husband. There are so many facts compelling wife to leave matrimonial home of husband such as, ill-treatment, cruelty, dowry harassment, threat to life etc. No women in Bharatha leaves voluntarily matrimonial home of husband. The bondage between husband and wife is sacred one as per Hindu traditions and customs. The solemnization of marriage between a

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NC: 2024:KHC:14466 male and female among Hindus is not a mere contract but it is a sacred celebration of union of two souls. When such being the traditions we have, if a wife decides to leave husband and takes decision to start residing independently/separately from husband, then what

mental agony might have occurred to the wife and apprehending feelings of wife, what bad experiences the wife must have undergone to take such extreme step of residing separately from husband is not a simple factor just to give maintenance or not to give maintenance. Hindu concept of marriage:

Marriage as a sacrament Among Hindus.--Manu laid down:

Wife is a divine institution given by Gods.

One should not think that one has obtained her by choice.

Her unity (with her husband) is established by the Vedas A woman is half of her husband and completes him (Ardha Narishwara).

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NC: 2024:KHC:14466 A Women must be honoured by her father, brother, husband and brother-in-law, who desires their own welfare. Where women are honoured, the Gods are pleased, but where they are not honoured, no sacred rites yield any reward.

Neither by sale nor desertion can a wife be released from her husband, this, we understand is the law ordained by the creator in former times.

Let mutual fidelity continue till death, this in few words, may be considered as the highest Dharma of husband and wife.

Let a man and woman united in marriage constantly be beware lest at any time disunited, they violate their mutual fidelity.

The objects of a Hindu marriage have been to have offsprings, to be able to perform religious rites and sacrifices (which a man can perform only along with his wife) and to have highest conjugal happiness and heavenly bliss for the ancestors and oneself the achievement of all these objectives are dependent upon the wife. Manu declared that a man who has not taken a wife has not fully perfected his personality and must be regarded as incomplete and imperfect. His personality is developed and completed, manu declared, only upon the union of his wife, himself

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NC: 2024:KHC:14466 and his offspring. This is the significance of unity of personality of man and his wife under Hindu law. Thus, according to the Grihyasutras, marriage is not a contract but a spiritual union, a holy bond of unity. The words addressed to the bride after the saptapadi are:

Into my will, I take thy heart, thy mind shall follow mine.

Probably, no other people have endeavoured to idealize the institution of marriage as the Hindus have done. Even in the patriarchal society of the Rig vedic Hindus, marriage was considered as a sacramental union. And it continued to be so in the entire Hindu period, and even in our contemporary world most Hindus regard their marriage as a sacrament. We find the following passage in the Manu Smriti:

I hold your hand for saubhagya (good luck) that you may grow old with your husband, you are given to me by the just, the creator, the wise and by the learned people.

Manu enjoins on the wife that she should become a paturnuvarte, i.e., she should follow the same principles as her husband. According to the Rig Veda:

Be thou mother of heroic children, devoted to the Gods, be

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NC: 2024:KHC:14466 thou Queen in thy Father-in-law's household. May all Gods unite the hearts of us two into one.

Wife is also ardhangini (half of man). According to the satpatha Brahmana: "The wife is verily the half of the husband. Man is only half not complete until he marries." The Taittiriya samhita is to the same effect, "half is she of the husband that is wife". From this notion of unity of personality of husband and wife, mutual fidelity of husband and wife is implied. Manu declared that mutual fidelity between husband and wife is implied. Manu declared that mutual fidelity between husband and wife is the highest Dharma. Manu further said that once a man and a woman are united in marriage, they must see that there are no differences between them, and that they remain faithful to each other.

In the Shastra, husband and wife are referred to by several names. The husband is known as Bharta, because he is to support his wife, he is also known as pati, because he is to protect her. On the other hand, the wife is known as jaya, because one's own self is begotten on her. According to the Mahabharata, by cherishing woman, one but virtually worships the goddess of prosperity herself; by afflicting her, one but afflicts the goddess of prosperity. A man's half is

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NC: 2024:KHC:14466 his wife: the wife is her husband's best of friends; the wife is the source of Dharma, Artha and Kama, and she is also the source of Moksha. In the Ramayana, the wife is said to be the very soul of her husband. She is grihani (the lady

of the house) in her husband's household, sachiva (wise counsellor), sakhi (confidante) to her husband and dearest disciple of her husband in the pursuit of art. She is grihalakshmi, ardhangini and samarajyi.

Thus, Hindus conceived of marriage as a sacramental union, as a holy union. This implies several things. Firstly, the marriage between man and woman is of religious or holy character and not a contractual union. For a Hindu marriage is obligatory, for begetting son, for discharging his debt to his ancestors and for performing religious and spiritual duties. Wife is not merely a grihapatni but also dharmapatni and sahadharmini.

(courtesy - Law of Marriage & Divorce, Paras Diwan, Seventh Edition, LexisNexis Publications, page No.14, 15, 16.)

14. Therefore, marriage among Hindus is a sacrament; celebration of union of two souls and is not a contract. When there is such a divine concept of institution of marriage among

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NC: 2024:KHC:14466 Hindus, and wife leaves her parents home and decides to join her husband's matrimonial home, with all dreams of building her life, if the wife decides to live separately from the husband, then one can apprehend how much mental agony, frustration, hardship has undergone in the mind of wife.

15. No woman in Bharat for flimsy reasons takes decision to live separately from husband. There must have been some reason compelling the wife to reside separately. Therefore, just because there is a decree of restitution of conjugal rights is obtained by the husband, how far it is correct to compel the wife to join matrimonial home of husband when wife is going to turmoil. Therefore, these two aspects are to be considered under the principles of decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, vis- à-vis., right of claiming maintenance under section 125 of the Cr.P.C. is to be appreciated.

16. The Delhi High Court in the case of Babita vs. Munna Lal in Crl.Rev.P.1001/2018 decided on 22.08.2022 has held that mere existence or non compliance of decree of restitution of conjugal rights by itself could not debars

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NC: 2024:KHC:14466 or disentitles the wife within the meaning of section 125 of Cr.P.C. from getting an order of maintenance. The Division Bench of Punjab and Haryana High Court in the case of Ravi Kumar vs. Santosh Kumari, in Crl.R.44 of 1992 decided on 22.04.1997 has held at paragraph No.11 as follows:

(11) We, therefore, answer the question of law referred to us as follows:-

- 1) The wife against whom a decree of restitution of conjugal rights has been passed by the Civil court, shall not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights before the Civil court, a specific issue has been framed that whether without sufficient reason, the wife refuses to live with the husband, and the parties have been given an opportunity to lead evidence and thereafter specific findings are recorded by the Civil Court on this issue;
- 2) But in case the husband has got an ex parte decree of restitution of conjugal rights from the Civil Court, such decree shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure;

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- 3) In case the decree for restitution of conjugal rights has been obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree ipso facto, shall not disentitle the wife to her right of maintenance and in that case, the husband will have to approach the Court of the Magistrate under sub-section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125 Cr.P.C.;

And

4) The wife against whom decree of restitution of conjugal rights in the manner

indicated in our first conclusion has been passed, will get the right to claim maintenance from the husband with effect from the date when she is granted divorce and she will continue getting this maintenance till she re-marries.

17. The High Court of Himachal Pradesh in the case of Hem Raj vs. Urmila Devi and others, reported in 1996 SCC Online HP 116, has held that if husband obtains a decree for restitution of conjugal rights, and if wife does not joint the husband, then the wife is not entitled for maintenance under section 125 of Cr.P.C.

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18. This Court, in the case of Sri Subbaraya B. Manja vs. Smt.Rajalakshmi, in RPFC No.110/2012 decided on 24.04.2014, has held that once Civil Court has found in a contesting proceedings on the basis of the evidence that the wife had no just or reasonable cause to withdraw her company from the husband, she cannot claim maintenance under section 125 of Cr.P.C. in spite of there is a decree

for restitution of conjugal rights.

19. Therefore, just because the decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act is obtained by the husband, and if wife does not join matrimonial home of husband, whether it amounts that the wife has voluntarily deserted the husband without any just and reasonable cause and left the husband is a question to be answered.

20. There are various reasons for the wife to desert her husband. Some reasons can be expressed and some cannot be expressed. The reasons for desertion to be expressed are mental or physical violence or both on the

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NC: 2024:KHC:14466 wife like torture, ill-treatment, making insult etc.. Some reasons cannot be expressed open to the society like impotency or any other diseases of the husband, which cannot be expressed to anyone else in the society, even sometimes to her parents also. Therefore, there are various reasons for the wife to take extreme step of desertion to reside separately from the husband. When the wife becomes destitute, she has to struggle hard for her maintenance.

21. Therefore under these circumstances if husband files a petition under section 9 of the Hindu Marriage Act, for restitution of conjugal rights, then sometimes it may not be possible for the wife to contest the said petition due to her economical incapacity. Even though the wife contest the petition, it is not possible for her to express all the sensitive matters/issues to the Court openly for the reason that to preserve prestige and honour of the family of both her parents and her husband's. Though the petition is contested and decree for restitution of conjugal rights is

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NC: 2024:KHC:14466 passed, but compelling the wife to join her husband is nothing but putting forcefulness on the mind of the wife to join the husband infringing her privacy and her willingness and wish. Therefore, no force can be applied either to husband or wife to join the spouses. The existence of wife is not a mere physical body, but it is about feelings, mental decision, physical decision, emotions and thus, wife is not a mere physical entity like any other object. Wife is a human being. Hence she cannot be forced to join her husband against her will and wish. Though the husband obtains a decree for restitution of conjugal rights, but it cannot be executed unless wife is willing to join the company of husband on her own will and wish.

22. Section 9 of the Hindu Marriage Act is legislated with above object making a platform to make to unite husband and wife. But just because decree of conjugal rights is granted, it cannot be executed against the feelings and emotions of wife compelling her to join husband, as the wife is not a mere object of physical

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NC: 2024:KHC:14466 entity. Though the Civil Court while considering the petition for restitution of conjugal rights can see only evidence produced before it, but some things cannot be expressed openly. Even wife takes a prudent approach, which is better to say, which is not better to depose all the things before the Court to preserve prestige and honour of the family of both the husband and wife. Therefore, just because restitution of conjugal rights decree is passed, such a decree cannot be executed, otherwise it amounts to put pressure and compulsion on the mind of the wife to join the husband and in this regard the wife's status has become the only physical entity. This is forcing the wife to join the husband on the basis of a decree for restitution of conjugal rights is nothing but violation of Article 21 of the Constitution of India. The wife is not mere animal existence or a physical body entity. It is a law of nature that no one can be forced to commit the act against his/her own will. Therefore just because the decree of restitution of conjugal rights is obtained, though it is contested, not only ex parte decree and when the wife do

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NC: 2024:KHC:14466 not join the matrimonial home of the husband, it does not amount to voluntary desertion of husband as per sub-section 4 of section 125 of Cr.P.C.

23. There is a recent development that section 9 of the Hindu Marriage Act is used as a platform to obtain a decree of divorce before invoking section 13 of the Hindu Marriage Act to make a ground that the wife has deserted husband voluntarily. Therefore, the petition under section 9 of the Hindu Marriage Act is filed and obtained a decree of restitution of conjugal rights, then, if the wife does not join the husband, it enables the husband to raise a ground of desertion by the wife in divorce petition. Therefore, just because there is a decree of restitution of conjugal rights, it always does not mean that really husband wants wife. Therefore, law is being used in this context also. Hence it cannot always be said that just because contested petition for decree of conjugal rights proves that wife has on her own willingness refused to join the companionship of the husband. Therefore, though the decree for restitution of

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NC: 2024:KHC:14466 conjugal rights is passed irrespective of ex parte or contesting the petition, the destitute wife is entitled for maintenance under section 125 of Cr.P.C.

24. Even a divorced wife is entitled for maintenance. When the divorced wife is entitled for maintenance, why not for a destitute wife during subsisting marriage. Therefore it is discrimination that divorced wife is entitled for maintenance and a destitute wife just because living separately is not entitled for maintenance. Thus, it is violative of Article 14 of the Constitution of India.

25. When a petition is filed under section 9 of the Hindu Marriage Act, the proceedings is summary in nature and moreover the Civil courts are having normal tendency to allow the petition for restitution of conjugal rights. Decreeing the petition for restitution of conjugal rights is a general rule. Dismissal of petition is exception. When the proceedings under section 9 of the Hindu Marriage Act is summary in nature, and though whatever evidence is

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NC: 2024:KHC:14466 produced before the Civil Court, decree of restitution of conjugal rights will be passed. As above stated, just decree for restitution of conjugal rights is passed, it cannot be forced the wife to join the husband. External force cannot be applied compelling the wife to join the husband against her will.

26. The Hon'ble Supreme Court has upheld the constitutional validity of section 9 of Hindu Marriage Act. In the case of Smt.Saroj Rani vs. Sudarshan Kumar Chadha, reported in (1984) 4 Supreme Court Cases 90, it is held that the concept of restitution of conjugal rights is based on the idea that marriage is a sacrament and it is the duty of the parties to live together. Section 9 of the Hindu Marriage Act is an aid to make an attempt to re-union husband and wife through the process of law. Section 9 of the Hindu Marriage Act is for protecting institution of marriage and its objective is to maintaining marital harmony. Thus, its constitutional validity is upheld by the Hon'ble Apex Court.

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27. Section 9 of the Hindu Marriage Act emphasizing its role in promoting reconciliation and preservation of marriage. The Court cannot force the wife to stay with the husband when wife makes allegation against the husband. The restitution of conjugal rights simply means that the Court can order the parties to resume cohabitation and marital relations, but it cannot force to live together against her will. Some rights and obligations emerge as a result of union like the right to stay together and to engage in sexual intercourse with each other and to fulfill the marital obligations. Thus, basically the rights that emerging from marital bond which have to be fulfilled by both the parties and if they do not do so, naturally, they can be persuaded as a permissive compulsion by the course to do so. Therefore, a decree of restitution of conjugal rights passed by the Civil Court is nothing but a pursuing compulsion on the part of the wife or husband to join respectively their matrimonial home, but it is not a compulsorily compelling the wife to join the

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NC: 2024:KHC:14466 husband. This is the concept of restitution of conjugal rights.

28. In the case of Sunita Kachwaha vs. anil Kachwaha, reported in (2014) 16 SCC 715, the Apex Court had occasion to observe how to exercise the discretionary jurisdiction under Section 125 of the Cr.P.C. It was observed as under:

"6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the

intricacies of dispute between the appellant-wife and the Respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

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7. Inability to maintain herself is the pre- condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

29. Therefore the Court has to be cautious in determining maintenance to wife under section 125(1) of Cr.P.C. holding that non compliance of decree of restitution of conjugal rights will be held as a ground for not granting maintenance under section 125(4) of Cr.P.C. While doing so, the conduct of the wife as to whether the wife had sufficient reason not to stay with the husband or husband creating such circumstances that the wife is not able to stay with him have to be carefully observed by the Court. These circumstances have to be considered while

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NC: 2024:KHC:14466 deciding the petition under section 125 of Cr.P.C. for maintenance but not solely being influenced by the decree of restitution of conjugal rights. As discussed above, there cannot be forceful circumstances for the wife to join the husband that may not be coming in the proceedings under section 9 of the Hindu Marriage Act. Therefore the Court has to consider the case in summary way and observe what are the compelling circumstances to reside separately and to decide the petition filed for maintenance.

30. Therefore, granting the decree for restitution of conjugal rights to the husband, ifso facto shall not debar the wife from claiming maintenance. Therefore, section 125 of Cr.P.C. and section 9 of the Hindu Marriage Act are to be interpreted for which reason and object they are enacted. Here, while considering the case for grant of maintenance, the purposeful interpretation shall be made. While interpreting, applying section 9 of the Hindu Marriage Act and section 125 of Cr.P.C, both the provisions are meant for achieving social justice.

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NC: 2024:KHC:14466 Protection and preservation of institution of marriage is also social justice. Therefore, just because the decree of restitution of conjugal rights is granted and the same is not complied with by the wife, that cannot defeat the social justice given to the wife and the way of law has been provided to the wife under section 125 of Cr.P.C. Therefore, these two legislatures shall be interpreted achieving social justice in general and social protection to wife.

31. As observed above, sometimes section 9 of the Hindu Marriage Act is a tool for husband to negate maintenance to the wife and sometimes making a platform to obtain decree of divorce. Therefore, for this reasons also just because the decree of restitution of conjugal rights is passed and wife is not willing to join the husband, it does not always amount to voluntary refusal of wife to join the husband. Therefore the petition filed under section 125 of Cr.P.C. are to be dealt with independently whether the wife is entitled for maintenance or not. The Courts

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NC: 2024:KHC:14466 while considering the proceedings under section 125 Cr.P.C., has to conduct independent enquiry by appreciating the evidence which is before the Court to reach conclusion whether wife makes out a ground and fulfill conditions for grant of maintenance. There is nothing in law to bar grant of maintenance under section 125 of Cr.P.C. in case a decree of restitution of conjugal rights is possessed by the husband. There is no express bar to grant maintenance to the wife against whom a decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act has been passed, therefore there is no bar to entertain the petition for grant of maintenance.

32. The decree for restitution of conjugal rights at the hands of the husband at the most enures him to take defence in the proceedings initiated by wife under section 125 of Cr.P.C., but for the Court it shall not be a sole factor to refuse grant of maintenance to wife. Therefore the petition filed under section 125 of Cr.P.C. can be considered on its own and independently after receiving

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NC: 2024:KHC:14466 evidence on record, but without being influenced by the decree of restitution of conjugal rights.

33. Another aspect is that as observed above, if the non compliance of decree of restitution of conjugal rights, it may result into divorce by taking a ground by the husband. It is settled law that even divorced wife is entitled to claim maintenance. Therefore, it is improper and unfair to deny maintenance to wife when she becomes destitute. Accordingly the point for consideration is answered that though there is decree of restitution of conjugal rights against wife and wife does not join the matrimonial home of the husband, that does not amount to voluntary refusal/desertion of husband, barring to claim maintenance under section 125 of Cr.P.C.

34. In these cases the petitions filed by wife were dismissed solely on the reason that the husband has obtained decree of restitution of conjugal rights and wife did not join the husband, therefore amounting to voluntary desertion of husband by wife, hence, wife is not entitled

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NC: 2024:KHC:14466 for maintenance under section 125 of Cr.P.C. These findings and conclusions of the Family Courts are hereby set aside. Therefore in these three petitions wife is entitled for maintenance.

35. Now let me consider the quantum of maintenance to be granted in each case as follows:

RPPC No.104/2018.

36. In the present case the relationship between the petitioner and respondent as wife and husband is not disputed. It is also not disputed that the petitioner is legally wedded wife of the respondent. It is alleged that the relationship between the petitioner and respondent was strained. Therefore she filed petition under section 125 of Cr.P.C. for maintenance and that is dismissed. For the above stated reasons, the reasons assigned by the Family Court dismissing the petition are set aside. Thus the petitioner being wife of the respondent and is a destitute wife is entitled for maintenance and quantified as follows.

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37. The petitioner has claimed maintenance of Rs.10,000/- per month from the respondent. It is borne out from the records that the respondent husband was in the process of solemnizing second marriage with another woman. Therefore the petitioner has filed suit in O.S.No.721/2014, on the file of IV Addl. Civil Judge, Shivamogga for permanent injunction restraining the respondent to solemnize second marriage and it is stated that the said suit is pending. Therefore when this being the fact, it probablizes the fact that the respondent has tried to solemnize second marriage with another woman. It means that the respondent is a financially capable person to maintain second wife and why not legally wedded wife-petitioner. This is not controverted by the respondent. Therefore, considering the entire case on its preponderance of probabilities, the respondent shall pay maintenance to the wife. It is the duty and also pious obligation to maintain the wife and children. Here wife alone has filed petition for maintenance. The respondent being husband shall not take any excuse not to maintain

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NC: 2024:KHC:14466 his wife. Therefore it is hereby ordered the respondent shall pay maintenance amount of Rs.10,000/- per month to the petitioner from the date of petition till the life time of petitioner wife or till she re-marries. Therefore the petition in RPPC No.104/2018 is liable to be allowed accordingly.

38. In the present case the petitioners are wife and two minor children of the respondent. The relationship between the parties is not disputed. At the time of filing the petition, the 2nd petitioner

son was alive and he died on 11.09.2014 during the pendency of the petition. Therefore the Family Court has not granted maintenance to the 2nd petitioner. The Family Court has rejected the petition filed by the 1st petitioner wife and granted maintenance of Rs.6,000/- per month to the 3rd petitioner daughter till she get married.

39. The Family Court has rejected the maintenance to the 1st petitioner wife on the reason that the 1st

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NC: 2024:KHC:14466 petitioner wife is doing coolie work in the agricultural lands and also grazing cattle and hence is earning. Also another reason for rejection of maintenance to the wife is that she has not joined the husband in spite of decree of restitution of conjugal rights.

40. Just because the 1st petitioner wife goes for coolie work, the work in agricultural land and grazing cattle that does not mean that the wife is capable to earn and it is not the reason to shirk the responsibility of the husband to maintain the wife. When the wife become destitute, inevitably the wife has to work for her livelihood and for feeding the children. Therefore this does not mean that the respondent is not liable to pay maintenance. The wife and children could not await decree from the Family Court granting maintenance. Therefore for satisfying starvation of herself and children, inevitably without any alternative way, wife starts to work and therefore this is not the reason holding that the husband is not liable to

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NC: 2024:KHC:14466 pay maintenance. Therefore this approach of the Family Court is hereby set aside.

41. The respondent is proved to be teacher working in a Government Higher Primary School. Ex.P.5 is the certificate issued by the Block Education Officer, Srirangapattana, stating that the respondent husband is a Government Teacher. Ex.P.6 is the school fees paid receipts paid by the 1st petitioner giving education to her children. Further, Ex.P.7 to P.17 are the RTC extracts which prove the father of respondent is owner of agricultural land in which the respondent is having share definitely. Exs.P.18 to P.24 are the school fees paid receipts paid by the 1st petitioner wife of her children education. Therefore, when this being the evidence produced by the petitioner, it is proved that the 1st petitioner is wife and petitioners No.2 and 3 are children and respondent is working as a teacher in the Government Higher Primary School. It is defence of the respondent that the 1st petitioner's parents are financially potential persons

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NC: 2024:KHC:14466 and thus the 1st petitioner is not entitled for maintenance from the respondent. Just because the parents or other relatives of the 1st petitioner have entered into agreement of development of their land, how this is concerned to the 1st petitioner in order to

negate the petitioner to claim maintenance is not forthcoming. The parents of 1st petitioner may be financially potential persons, but that does not mean that the 1st petitioner is not entitled for maintenance from the husband. Inevitably the 1st petitioner after desertion started to live along with her parents and the parents and other relatives may be financially potential persons, but that cannot be the reason to shirk the responsibility to pay maintenance to the wife.

42. Ex.R.14 is the salary certificate of respondent showing gross salary of Rs.29,638/- . The respondent might have obtained loan such as housing loan, personal loan and other loans that would ultimately to the benefit of the respondent and therefore whatever instalments to be paid towards such loans and deductions might have been

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NC: 2024:KHC:14466 made in the salary slip of the respondent, that cannot be deducted while considering the quantum of maintenance. Ex.R.52 is the copy of sale deed of site, which proves that the respondent has purchased site in Mysuru City. The respondent might have availed loan for purchasing the said site and is paying instalments towards repayment of the said loan. But whatever instalments are paying and made deductions in the salary slip, that cannot be deducted while considering the quantum of maintenance to be determined, payable to the wife, for the reason that those loans availed or any deductions are made are ultimately to the benefit of the respondent. Therefore, considering the evidence that the respondent is a Government employee, working as a teacher in the Government Higher Primary School and as per Ex.R.14 salary certificate, issued by the Block Education Officer, Srirangapattana stating that the respondent was receiving gross salary of Rs.29,638/- as on 14.09.2015, though the deductions are shown as Rs.19,074/- and take home

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NC: 2024:KHC:14466 salary is Rs.10,564/-, such deductions cannot be considered for determining the quantum of maintenance.

43. In certain circumstances the husband makes arrangement for more quantum of deductions by creating artificial deductions so as to show lesser take home salary for the purpose of negating compensation to the wife or an attempt to make awarding lesser quantum of maintenance. Only the tax collected towards income tax and professional tax are to be deducted. Whatever the other deductions are ultimately to the benefit of the husband. Therefore, after deductions in the salary slip towards KGID, GPF, LIC, society loan, SBI loan, cannot be deducted for the purpose of quantifying the maintenance. Therefore, considering the gross salary is Rs.29,638/- and the respondent being Government servant is having other facilities and perks such as medical reimbursement, etc., therefore, for the purpose of quantifying the maintenance, gross salary minus tax paid towards income tax and professional tax is considered. Accordingly it is ordered

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NC: 2024:KHC:14466 that the respondent husband shall pay maintenance amount of Rs.10,000/- to the 1st petitioner wife and Rs.8,000/- per month to the 3rd petitioner daughter who is studying, from the date of petition till her life time in the case of 1st petitioner or she remarries and till marriage in the case of the 3rd petitioner daughter. Therefore, the petition filed by the petitioners in RPFC No.134/2017 is liable to be allowed accordingly.

RPFC No.131/2019.

44. In this case the relationship of the parties as 1st petitioner is wife and 2nd petitioner is minor daughter of the respondent is not disputed. The Family court has granted maintenance of Rs.7,000/- per month only to the 2nd petitioner daughter, but rejected claim of maintenance to the 1st petitioner wife on the ground that the 1st petitioner wife is working. The Family Court has observed and came to the conclusion that since the 1st petitioner has not honoured the decree of restitution of conjugal rights obtained by the respondent husband, and the

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NC: 2024:KHC:14466 petitioners have left the matrimonial home of the respondent, therefore rejected the claim of the 1st petitioner and granted maintenance of Rs.7,000/- per month to the 2nd petitioner daughter. The Family Court has observed that before the marriage the 1st petitioner might have been working but there is no evidence to show that as on the date of filing the petition the 1st petitioner was working and having source of income. PW.1 in her evidence deposed that she is doing fashion designing course. Just because the 1st petitioner was pursuing fashion designing course, that does not mean that the 1st petitioner wife is working and earning income and it is not the reason for shirking responsibility of the respondent husband to maintain the wife and child.

45. Upon considering the evidence on record and averments taken in the petition and statement of objection of the respondent, it is proved that the 1st petitioner is not working and does not have any source of income. Whereas it is case of the respondent husband that he is an engineer

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NC: 2024:KHC:14466 working at Mahindra Tech Company at Pune and receiving lucrative salary. The respondent has taken contention that he has purchased a plot in Pune for Rs.44,00,000/- out of his savings. Therefore, this proves that the respondent is a financially capable person. Therefore, upon considering the entire case on all its preponderance of probabilities, in the background of their pleadings and averments in the petition and admissions made in the statement of objections and evidence on record, it is proved that the respondent is an engineering graduate working in a private company and when he was able to purchase plot worth of Rs.44,00,000/- in Pune, which proves the financial capacity of the respondent. Though for the sake of assumption respondent might have purchased property worth of Rs.44,00,000/- by raising loan, unless having capacity to repay the loan either by way of interest or by equal monthly instalments, the respondent husband could not have ventured to purchase the plot worth of Rs.44,00,000/-. Therefore, this shows the financial capacity of the respondent. Therefore, the respondent

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NC: 2024:KHC:14466 husband is liable to pay maintenance. Considering the factors discussed above, it is hereby ordered that the respondent to pay maintenance amount of Rs.25,000/- to the 1st petitioner wife and Rs.10,000/- to the 2nd petitioner daughter from the date of petition till the lifetime of the 1st petitioner wife or she remarries and till the marriage in the case of 2nd petitioner daughter.

46. Therefore, for the aforesaid reasons, the petitions filed by the wife and children above stated are liable to be allowed. Hence, I proceed to pass the following:

ORDER

- i) All the three revision petitions are allowed.
- ii) The order dated 20.07.2017, passed in Crl.Misc.No.128/2016, by the Family Court, Shivamogga, is hereby set aside.
- iii) The Crl.Misc.No.128/2016, on the file of the Family Court, Shivamogga, is hereby allowed.

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NC: 2024:KHC:14466

iv) It is hereby ordered that the respondent husband in Crl.Misc.No.128/2016 (RPFC No.104/2018) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the petitioner from the date of filing of the petition till the life time of petitioner wife or till she re-marries.

v) The order dated 14.02.2017, passed in Crl.Misc.No.558/2013, by the Prl. Judge, Family Court, Mysuru, is hereby modified.

vi) It is hereby ordered that the respondent husband in Crl.Misc.No.558/2013 (RPFC No.134/2017) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the 1st petitioner wife and Rs.8,000/- (Eight Thousand Rupees) per month to the 3rd petitioner daughter, from the date of filing of the petition till her life time in the case of 1st petitioner or she re-marries and till the marriage in the case of the 3rd petitioner daughter.

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NC: 2024:KHC:14466

vii) The order dated 17.05.2019, passed in Crl.Misc.No.133/2018, by the I Addl. Prl. Judge, Family Court, Mysuru, is hereby modified.

viii) It is hereby ordered that the respondent husband in Crl.Misc.No.133/2018 (RPFC No.131/2019) shall pay maintenance amount of Rs.25,000/- (Twenty-Five Thousand Rupees) per month to the 1st petitioner wife and Rs.10,000/- (Ten Thousand Rupees) per month to the 2nd petitioner daughter, from the date of filing of the petition till the lifetime in the case of the 1st petitioner wife or she re-marries and till the marriage in the case of 2nd petitioner daughter.

ix) No order as to costs.

Sd/-
JUDGE

MH

Smt S R Ashwini vs G Harish on 23 February, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REV.PET FAMILY COURT NO. 104 OF 2018

C/W

REV.PET FAMILY COURT NO. 134 OF 2017

REV.PET FAMILY COURT NO. 131 OF 2019

IN RPFC NO. 104/2018

BETWEEN:

SMT. S.R. ASHWINI
W/O. G HARISH,
OCC: HOUSEHOLD,
D/O. NETRA,

Digitally signed by

JAI JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

R/O. CHOWDESHWARI COLONY,
NEAR RAILWAY GATE,.
ROAD LEADS TO HONNALI,
SHIMOGA CITY - 577 201
(BY SRI. PRASAD B S, ADVOCATE)

...PETITIONER

AND :

G. HARISH
S/O. GUDDALLI GIDDAPPA,
R/O. KAZIKOPPALU,
S.S. ROAD,
SHIKARIPURA TOWN - 577 427,
SHIMOGA DISTRICT.

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

...RESPONDENT
(RESPONDENT NOTICE H/S V/O DATED 03.06.2021)

THIS RPFC IS FILED UNDER SEC. 19[4] OF FAMILY COURT ACT AGAINST THE ORDER DATED 20.07.2017 PASSED IN C. MISC. NO. 128/2016 ON THE FILE OF THE PRL. FAMILY COURT, SHIVAMOGGA. DISMISSING THE PETITION FILED UNDER SEC. 125 OF CR. P. C. FOR MAINTENANCE.

IN RPFC NO. 134/2017

BETWEEN:

1. SMT. SHASHIKALA
W/O B. S. MAHADEVAPPA,
AGED ABOUT 36 YEARS,

MANUKUMARA B. M
S/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,
(DIED ON 11-09-2014)

2. APOORVA
D/O B. S. MAHADEVAPPA,
AGED ABOUT 13 YEARS,

ALL ARE RESIDING AT:
YADAHALLI VILLAGE,
JAYAPURA HOBLI,
MYSORE TALUK
MYSORE.

...PETITIONERS

(BY SRI. RUPESH KUMAR S, ADVOCATE)

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NC: 2024:KHC:14466
RPFC No. 104 of 2018

AND:

1. B.S. MAHADEVAPPA
S/O SRI. SHIVANNA,
AGED ABOUT 43 YEARS,
RESIDING AT D. NO. 629,
7TH "E" CROSS,
HEBBAL 1ST STAGE,
MYSURU - 570 016.

WORKING AS TEACHER AT
GOVERNMENT HIGHER PRIMARY SCHOOL,
CHINNANAYAKANAHALLI,
NEAR KARIGATTA,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT.

... RESPONDENT

(BY SRI. SATHYA. D. ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY COURT ACT., AGAINST THE JUDGMENT DATED 14.02.2017 PASSED IN C. MIS. NO. 558/ 2013 ON THE FILE OF THE PRL. JUDGE, FAMILY COURT, MYSURU, PARTLY ALLOWING THE PETITION FILED UNDER SEC. 125 OF Cr. P. C., FOR MAINTENANCE.

IN RPFC NO. 131/2019

BETWEEN:

1. SMT. SHARADHA ANVEKAR
W/O PANKAJ ANVEKAR,
AGED ABOUT 34 YEARS,

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

2. BABY SNEHAL
D/O PANKAJ ANVEKAR
AGED ABOUT 3 YEARS,
REP. BY ITS NATURAL GUARDIAN
SMT. SHRADHA ANVEKAR

BOTH RESIDING AT
#973, 4TH CROSS,
SATHAGALLI
MYSORE - 570 019.

...PETITIONERS

(BY SRI. MOHAN B.K, ADVOCATE)

AND:

SRI. PANKAJ ANVEKAR
S/O SURENDRA ANVEKAR
AGED ABOUT 36 YEARS,
R/AT #418, GANDHINAGAR
NAIKWADI PLOT, UPLAI ROAD,
NEAR GODOWN, BARSHI - 413 411
SOLAPUR DISTRICT
MAHARASTRA - 413 411

...RESPONDENT

(NOTICE SERVED)

THIS RPFC FILED UNDER SEC. 19(4) OF FAMILY COURT ACT AGAINST THE ORDER DATED 17.05.2019 PASSED IN C. MIS. NO. 133/2018 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT MYSURU, PARTLY ALLOWING THE PETITION FILED UNDER SEC. 125 OF CR. PC., FOR MAINTENANCE.

THESE PETITIONS, COMING ON FOR FINAL HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:14466
RPFC No. 104 of 2018
C/W RPFC No. 134 of 2017
RPFC No. 131 of 2019

ORDER

All the three petitions are filed by the wife calling in question the judgment and award passed by the Family Courts in dismissing the petitions filed under Section 125 of Cr.P.C. filed by the respective petitioners - wife on the ground that in spite of decree of restitution of conjugal rights is passed against the wife but the wife did not join companionship of the respondent - husband. Therefore, the Family Courts have dismissed the petitions filed for maintenance.

2. Though the above said three petitions are ordered under different facts and circumstances but one common fact involved in these cases are that the petitioners were constrained to live separately from the respondents - husband on the ground that the respondents - husband have subjected the petitioners - wife to cruelty and ill-treatment. Therefore, the petitioners are living separately and thus, filed claim petitions praying for maintenance by invoking provisions of Section 125 of NC: 2024:KHC:14466 Cr.P.C. by filing respective petitions. The Family Courts have dismissed the

petitions filed under Section 125 of Cr.P.C. on the ground that respondents - husband have filed petitions invoking the provision of Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and decree is passed for restitution of conjugal rights. But the petitioners - wife did not join companionship of the respondents - husband. Therefore, on this ground that the wife did not join matrimonial home of the husband, which amounts to voluntary desertion, hence, the Family Court has concluded that the petitioners - wife are not entitled for maintenance. Accordingly, dismissed the petitions.

3. Heard the arguments from both sides and perused the records.

4. Learned counsel for the petitioners - wife in all the cases submitted that Section 125 of Cr.P.C. is the beneficial legislation achieving social justice to destitute wife, children and old aged parents. When on certain NC: 2024:KHC:14466 allegations that the respondents - husband have subjected the petitioners - wife into cruelty, ill-treatment and harassment to bring dowry amounts constraining the petitioners - wife to live separately. The wife is entitled social protection and maintenance under Section 125 of Cr.P.C., which is enacted for providing maintenance to the wife. Therefore, submitted that just because a decree for restitution of conjugal rights is obtained by husband and wife do not join husband that does not mean that the wife is not entitled for maintenance from the husband. He also submitted that just because the wife does not join companionship of husband in spite of decree of restitution of conjugal rights, that does not amount to voluntary desertion by the wife. Therefore, submitted that the Family Court without following principles of law laid down by the Hon'ble Supreme Court and the spirit of enacting Section 125 of Cr.P.C. has erroneously dismissed the petition filed for maintenance. He further submitted that when a divorced wife is entitled for maintenance but denying maintenance to the destitute wife though divorce NC: 2024:KHC:14466 is not obtained is amounting to discrimination among the wife. Therefore, irrespective of decree of restitution of conjugal rights, the wife is entitled for maintenance. Therefore, prays to allow the petitions and grant maintenance to wife.

5. On the other hand, learned counsel for the respondents - husband submitted that when a decree for restitution of conjugal rights is obtained by the husband and if wife does not join matrimonial house of the husband, it amounts to voluntary desertion by wife which attracts the provisions of Section 125 (4) of the Cr.P.C. Therefore, the Family Court is justified in dismissing the claim petitions. Hence prays to dismiss the petitions.

6. Learned counsel for the respondents - husband places reliance on the following judgments:-

i. Sri.Subbaraya V. Manja vs. Smt.Rajalaksmi and another in R.P.F.C.No.110/2012 dated 24.04.2014 (subbaraya case);

NC: 2024:KHC:14466 ii. In the case of Khursheed Ahmad vs. Smt.Zakira reported in 2006 SCC Online P & H 900 (Khursheed Ahmad case);

7. Upon hearing arguments from the respective learned counsels following point arises for my consideration:-

Whether, under the facts and circumstances involved in the case, upon the allegation made by wife against her husband that he had subjected the wife to cruelty, harassment, torture and wife decides to live separately from the husband and file petition under section 125 of Cr.P.C. for maintenance; then husband files petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and obtains decree for restitution of conjugal rights against the wife; then in spite of decree for restitution of conjugal rights, the wife do not join matrimonial home of husband, whether, it amounts to voluntary desertion by wife under section 125(4) of Cr.P.C. thus not entitling wife for claiming maintenance against husband as per section 125(1) of Cr.P.C.?

8. The facts in all the cases are that petitioners are wife of respondents respectively. The relationship

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NC: 2024:KHC:14466 between the parties as wife and husband is not disputed. On certain allegations made against the respondents, the petitioners have left matrimonial home and started living separately. The allegations made by the petitioners against the respondents are that the respondents have subjected the petitioners to cruelty, ill-treatment, harassment etc. The petitioners have felt that there is threat to their lives. Therefore, they have started to reside separately. When the wife has become destitute for sustaining in life and to lead normal life, to get fundamental necessity i.e., food, cloth, medicine etc., they have filed petitions seeking maintenance under Section 125 of Cr.P.C. The Family Court has dismissed the petitions filed under Section 125 of Cr.P.C. on the reason that the respondents have obtained decree for restitution of conjugal rights and the wife did not join matrimonial home of the respondents - husband, hence it amounts voluntary desertion under sub-section (4) of section 125 of Cr.P.C and thus, they are not entitled for maintenance and accordingly, dismissed the petition.

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NC: 2024:KHC:14466

9. The Hon'ble Supreme Court in the case of Rajnesh vs. Neha and another reported in AIR 2021 SC 569, has laid down law in so far as granting maintenance under Section 125 of Cr.P.C., which are as follows:-

"2. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the

date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on Maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to

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NC: 2024:KHC:14466 dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that:

"Nothing in this article shall prevent the State from making any special provision for women and children."

5. Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

6. Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors¹. held that the object of maintenance laws is:

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections (1978) 4 SCC 70(AIR 1978 SC 1807)

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NC: 2024:KHC:14466 like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 ("SMA"), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself.

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NC: 2024:KHC:14466 In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In *Bhagwan Dutt v Kamla Devi*(1975) 2 SCC 386: (AIR 1975 SC 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."

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NC: 2024:KHC:14466 (emphasis supplied) Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

In Chaturbhuj v. Satabai (2008) 2 SCC 316:

(AIR 2008 SC 530) this Court held that the object of

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NC: 2024:KHC:14466 maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

Proceedings under Section 125 of the Cr.P.C. are summary in nature. In Bhuwan Mohan Singh v Meena and Ors (2015) 6 SCC 353: (AIR 2014 SC 2875). this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able -bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim u/S 125 Cr.P.C. came up for the consideration in

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NC: 2024:KHC:14466 Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr. (2011) 1 SCC 141: (2011 Cri LJ 96 (SC)) before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife," to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for grant of maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125

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NC: 2024:KHC:14466 Cr.P.C. such strict standard of proof is not necessary."

10. Section 125 of Cr.P.C. is a social beneficial legislation. The object of this provision is to achieve social justice by providing social security to the destitute. Even divorced wife is entitled for maintenance as per Section 125 of Cr.P.C. as per law laid down by the Hon'ble Supreme Court in the catena of decisions. When this being the facts, if husband obtains decree for restitution of conjugal rights and wife refuses to join companionship of husband, whether it takes away right of wife for claiming maintenance is the question to be considered in the present case.

11. Section 9 of the Hindu Marriage Act, 1955 reads as follows:-

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition

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NC: 2024:KHC:14466 and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

12. As per sub-section (4) of section 125 of Cr.P.C., if there is no reason for the wife to desert husband or wife deserts husband voluntarily on her own will then the wife is not entitled for maintenance under Section 125 of Cr.P.C. After passing decree for restitution of conjugal rights and if wife does not join husband whether amounts to voluntary desertion or what are the reasons for the wife to reside separately is to be considered.

13. These type of situations are to be considered on the aspect that what compels the wife to leave matrimonial home of husband. There are so many facts compelling wife to leave matrimonial home of husband such as, ill-treatment, cruelty, dowry harassment, threat to life etc. No women in Bharatha leaves voluntarily matrimonial home of husband. The bondage between husband and wife is sacred one as per Hindu traditions and customs. The solemnization of marriage between a

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NC: 2024:KHC:14466 male and female among Hindus is not a mere contract but it is a sacred celebration of union of two souls. When such being the traditions we have, if a wife decides to leave husband and takes decision to start residing independently/separately from husband, then what

mental agony might have occurred to the wife and apprehending feelings of wife, what bad experiences the wife must have undergone to take such extreme step of residing separately from husband is not a simple factor just to give maintenance or not to give maintenance. Hindu concept of marriage:

Marriage as a sacrament Among Hindus.--Manu laid down:

Wife is a divine institution given by Gods.

One should not think that one has obtained her by choice.

Her unity (with her husband) is established by the Vedas A woman is half of her husband and completes him (Ardha Narishwara).

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NC: 2024:KHC:14466 A Women must be honoured by her father, brother, husband and brother-in-law, who desires their own welfare. Where women are honoured, the Gods are pleased, but where they are not honoured, no sacred rites yield any reward.

Neither by sale nor desertion can a wife be released from her husband, this, we understand is the law ordained by the creator in former times.

Let mutual fidelity continue till death, this in few words, may be considered as the highest Dharma of husband and wife.

Let a man and woman united in marriage constantly be beware lest at any time disunited, they violate their mutual fidelity.

The objects of a Hindu marriage have been to have offsprings, to be able to perform religious rites and sacrifices (which a man can perform only along with his wife) and to have highest conjugal happiness and heavenly bliss for the ancestors and oneself the achievement of all these objectives are dependent upon the wife. Manu declared that a man who has not taken a wife has not fully perfected his personality and must be regarded as incomplete and imperfect. His personality is developed and completed, manu declared, only upon the union of his wife, himself

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NC: 2024:KHC:14466 and his offspring. This is the significance of unity of personality of man and his wife under Hindu law. Thus, according to the Grihyasutras, marriage is not a contract but a spiritual union, a holy bond of unity. The words addressed to the bride after the saptapadi are:

Into my will, I take thy heart, thy mind shall follow mine.

Probably, no other people have endeavoured to idealize the institution of marriage as the Hindus have done. Even in the patriarchal society of the Rig vedic Hindus, marriage was considered as a sacramental union. And it continued to be so in the entire Hindu period, and even in our contemporary world most Hindus regard their marriage as a sacrament. We find the following passage in the Manu Smriti:

I hold your hand for saubhagya (good luck) that you may grow old with your husband, you are given to me by the just, the creator, the wise and by the learned people.

Manu enjoins on the wife that she should become a paturnuvarte, i.e., she should follow the same principles as her husband. According to the Rig Veda:

Be thou mother of heroic children, devoted to the Gods, be

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NC: 2024:KHC:14466 thou Queen in thy Father-in-law's household. May all Gods unite the hearts of us two into one.

Wife is also ardhangini (half of man). According to the satpatha Brahmana: "The wife is verily the half of the husband. Man is only half not complete until he marries." The Taittiriya samhita is to the same effect, "half is she of the husband that is wife". From this notion of unity of personality of husband and wife, mutual fidelity of husband and wife is implied. Manu declared that mutual fidelity between husband and wife is implied. Manu declared that mutual fidelity between husband and wife is the highest Dharma. Manu further said that once a man and a woman are united in marriage, they must see that there are no differences between them, and that they remain faithful to each other.

In the Shastra, husband and wife are referred to by several names. The husband is known as Bharta, because he is to support his wife, he is also known as pati, because he is to protect her. On the other hand, the wife is known as jaya, because one's own self is begotten on her. According to the Mahabharata, by cherishing woman, one but virtually worships the goddess of prosperity herself; by afflicting her, one but afflicts the goddess of prosperity. A man's half is

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NC: 2024:KHC:14466 his wife: the wife is her husband's best of friends; the wife is the source of Dharma, Artha and Kama, and she is also the source of Moksha. In the Ramayana, the wife is said to be the very soul of her husband. She is grihani (the lady

of the house) in her husband's household, sachiva (wise counsellor), sakhi (confidante) to her husband and dearest disciple of her husband in the pursuit of art. She is grihalakshmi, ardhangini and samarajyi.

Thus, Hindus conceived of marriage as a sacramental union, as a holy union. This implies several things. Firstly, the marriage between man and woman is of religious or holy character and not a contractual union. For a Hindu marriage is obligatory, for begetting son, for discharging his debt to his ancestors and for performing religious and spiritual duties. Wife is not merely a grihapati but also dharmapatni and sahadharmini.

(courtesy - Law of Marriage & Divorce, Paras Diwan, Seventh Edition, LexisNexis Publications, page No.14, 15, 16.)

14. Therefore, marriage among Hindus is a sacrament; celebration of union of two souls and is not a contract. When there is such a divine concept of institution of marriage among

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NC: 2024:KHC:14466 Hindus, and wife leaves her parents home and decides to join her husband's matrimonial home, with all dreams of building her life, if the wife decides to live separately from the husband, then one can apprehend how much mental agony, frustration, hardship has undergone in the mind of wife.

15. No woman in Bharat for flimsy reasons takes decision to live separately from husband. There must have been some reason compelling the wife to reside separately. Therefore, just because there is a decree of restitution of conjugal rights is obtained by the husband, how far it is correct to compel the wife to join matrimonial home of husband when wife is going to turmoil. Therefore, these two aspects are to be considered under the principles of decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, vis- à-vis., right of claiming maintenance under section 125 of the Cr.P.C. is to be appreciated.

16. The Delhi High Court in the case of Babita vs. Munna Lal in Crl.Rev.P.1001/2018 decided on 22.08.2022 has held that mere existence or non compliance of decree of restitution of conjugal rights by itself could not debars

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NC: 2024:KHC:14466 or disentitles the wife within the meaning of section 125 of Cr.P.C. from getting an order of maintenance. The Division Bench of Punjab and Haryana High Court in the case of Ravi Kumar vs. Santosh Kumari, in Crl.R.44 of 1992 decided on 22.04.1997 has held at paragraph No.11 as follows:

(11) We, therefore, answer the question of law referred to us as follows:-

- 1) The wife against whom a decree of restitution of conjugal rights has been passed by the Civil court, shall not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights before the Civil court, a specific issue has been framed that whether without sufficient reason, the wife refuses to live with the husband, and the parties have been given an opportunity to lead evidence and thereafter specific findings are recorded by the Civil Court on this issue;
- 2) But in case the husband has got an ex parte decree of restitution of conjugal rights from the Civil Court, such decree shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125 of the Code of Criminal Procedure;

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- 3) In case the decree for restitution of conjugal rights has been obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree ipso facto, shall not disentitle the wife to her right of maintenance and in that case, the husband will have to approach the Court of the Magistrate under sub-section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125 Cr.P.C.;

And

4) The wife against whom decree of restitution of conjugal rights in the manner

indicated in our first conclusion has been passed, will get the right to claim maintenance from the husband with effect from the date when she is granted divorce and she will continue getting this maintenance till she re-marries.

17. The High Court of Himachal Pradesh in the case of Hem Raj vs. Urmila Devi and others, reported in 1996 SCC Online HP 116, has held that if husband obtains a decree for restitution of conjugal rights, and if wife does not joint the husband, then the wife is not entitled for maintenance under section 125 of Cr.P.C.

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NC: 2024:KHC:14466

18. This Court, in the case of Sri Subbaraya B. Manja vs. Smt.Rajalakshmi, in RPFC No.110/2012 decided on 24.04.2014, has held that once Civil Court has found in a contesting proceedings on the basis of the evidence that the wife had no just or reasonable cause to withdraw her company from the husband, she cannot claim maintenance under section 125 of Cr.P.C. in spite of there is a decree

for restitution of conjugal rights.

19. Therefore, just because the decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act is obtained by the husband, and if wife does not join matrimonial home of husband, whether it amounts that the wife has voluntarily deserted the husband without any just and reasonable cause and left the husband is a question to be answered.

20. There are various reasons for the wife to desert her husband. Some reasons can be expressed and some cannot be expressed. The reasons for desertion to be expressed are mental or physical violence or both on the

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NC: 2024:KHC:14466 wife like torture, ill-treatment, making insult etc.. Some reasons cannot be expressed open to the society like impotency or any other diseases of the husband, which cannot be expressed to anyone else in the society, even sometimes to her parents also. Therefore, there are various reasons for the wife to take extreme step of desertion to reside separately from the husband. When the wife becomes destitute, she has to struggle hard for her maintenance.

21. Therefore under these circumstances if husband files a petition under section 9 of the Hindu Marriage Act, for restitution of conjugal rights, then sometimes it may not be possible for the wife to contest the said petition due to her economical incapacity. Even though the wife contest the petition, it is not possible for her to express all the sensitive matters/issues to the Court openly for the reason that to preserve prestige and honour of the family of both her parents and her husband's. Though the petition is contested and decree for restitution of conjugal rights is

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NC: 2024:KHC:14466 passed, but compelling the wife to join her husband is nothing but putting forcefulness on the mind of the wife to join the husband infringing her privacy and her willingness and wish. Therefore, no force can be applied either to husband or wife to join the spouses. The existence of wife is not a mere physical body, but it is about feelings, mental decision, physical decision, emotions and thus, wife is not a mere physical entity like any other object. Wife is a human being. Hence she cannot be forced to join her husband against her will and wish. Though the husband obtains a decree for restitution of conjugal rights, but it cannot be executed unless wife is willing to join the company of husband on her own will and wish.

22. Section 9 of the Hindu Marriage Act is legislated with above object making a platform to make to unite husband and wife. But just because decree of conjugal rights is granted, it cannot be executed against the feelings and emotions of wife compelling her to join husband, as the wife is not a mere object of physical

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NC: 2024:KHC:14466 entity. Though the Civil Court while considering the petition for restitution of conjugal rights can see only evidence produced before it, but some things cannot be expressed openly. Even wife takes a prudent approach, which is better to say, which is not better to depose all the things before the Court to preserve prestige and honour of the family of both the husband and wife. Therefore, just because restitution of conjugal rights decree is passed, such a decree cannot be executed, otherwise it amounts to put pressure and compulsion on the mind of the wife to join the husband and in this regard the wife's status has become the only physical entity. This is forcing the wife to join the husband on the basis of a decree for restitution of conjugal rights is nothing but violation of Article 21 of the Constitution of India. The wife is not mere animal existence or a physical body entity. It is a law of nature that no one can be forced to commit the act against his/her own will. Therefore just because the decree of restitution of conjugal rights is obtained, though it is contested, not only ex parte decree and when the wife do

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NC: 2024:KHC:14466 not join the matrimonial home of the husband, it does not amount to voluntary desertion of husband as per sub-section 4 of section 125 of Cr.P.C.

23. There is a recent development that section 9 of the Hindu Marriage Act is used as a platform to obtain a decree of divorce before invoking section 13 of the Hindu Marriage Act to make a ground that the wife has deserted husband voluntarily. Therefore, the petition under section 9 of the Hindu Marriage Act is filed and obtained a decree of restitution of conjugal rights, then, if the wife does not join the husband, it enables the husband to raise a ground of desertion by the wife in divorce petition. Therefore, just because there is a decree of restitution of conjugal rights, it always does not mean that really husband wants wife. Therefore, law is being used in this context also. Hence it cannot always be said that just because contested petition for decree of conjugal rights proves that wife has on her own willingness refused to join the companionship of the husband. Therefore, though the decree for restitution of

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NC: 2024:KHC:14466 conjugal rights is passed irrespective of ex parte or contesting the petition, the destitute wife is entitled for maintenance under section 125 of Cr.P.C.

24. Even a divorced wife is entitled for maintenance. When the divorced wife is entitled for maintenance, why not for a destitute wife during subsisting marriage. Therefore it is discrimination that divorced wife is entitled for maintenance and a destitute wife just because living separately is not entitled for maintenance. Thus, it is violative of Article 14 of the Constitution of India.

25. When a petition is filed under section 9 of the Hindu Marriage Act, the proceedings is summary in nature and moreover the Civil courts are having normal tendency to allow the petition for restitution of conjugal rights. Decreeing the petition for restitution of conjugal rights is a general rule. Dismissal of petition is exception. When the proceedings under section 9 of the Hindu Marriage Act is summary in nature, and though whatever evidence is

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NC: 2024:KHC:14466 produced before the Civil Court, decree of restitution of conjugal rights will be passed. As above stated, just decree for restitution of conjugal rights is passed, it cannot be forced the wife to join the husband. External force cannot be applied compelling the wife to join the husband against her will.

26. The Hon'ble Supreme Court has upheld the constitutional validity of section 9 of Hindu Marriage Act. In the case of Smt.Saroj Rani vs. Sudarshan Kumar Chadha, reported in (1984) 4 Supreme Court Cases 90, it is held that the concept of restitution of conjugal rights is based on the idea that marriage is a sacrament and it is the duty of the parties to live together. Section 9 of the Hindu Marriage Act is an aid to make an attempt to re-union husband and wife through the process of law. Section 9 of the Hindu Marriage Act is for protecting institution of marriage and its objective is to maintaining marital harmony. Thus, its constitutional validity is upheld by the Hon'ble Apex Court.

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27. Section 9 of the Hindu Marriage Act emphasizing its role in promoting reconciliation and preservation of marriage. The Court cannot force the wife to stay with the husband when wife makes allegation against the husband. The restitution of conjugal rights simply means that the Court can order the parties to resume cohabitation and marital relations, but it cannot force to live together against her will. Some rights and obligations emerge as a result of union like the right to stay together and to engage in sexual intercourse with each other and to fulfill the marital obligations. Thus, basically the rights that emerging from marital bond which have to be fulfilled by both the parties and if they do not do so, naturally, they can be persuaded as a permissive compulsion by the course to do so. Therefore, a decree of restitution of conjugal rights passed by the Civil Court is nothing but a pursuing compulsion on the part of the wife or husband to join respectively their matrimonial home, but it is not a compulsorily compelling the wife to join the

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NC: 2024:KHC:14466 husband. This is the concept of restitution of conjugal rights.

28. In the case of Sunita Kachwaha vs. anil Kachwaha, reported in (2014) 16 SCC 715, the Apex Court had occasion to observe how to exercise the discretionary jurisdiction under Section 125 of the Cr.P.C. It was observed as under:

"6. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the

intricacies of dispute between the appellant-wife and the Respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

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7. Inability to maintain herself is the pre- condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance."

29. Therefore the Court has to be cautious in determining maintenance to wife under section 125(1) of Cr.P.C. holding that non compliance of decree of restitution of conjugal rights will be held as a ground for not granting maintenance under section 125(4) of Cr.P.C. While doing so, the conduct of the wife as to whether the wife had sufficient reason not to stay with the husband or husband creating such circumstances that the wife is not able to stay with him have to be carefully observed by the Court. These circumstances have to be considered while

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NC: 2024:KHC:14466 deciding the petition under section 125 of Cr.P.C. for maintenance but not solely being influenced by the decree of restitution of conjugal rights. As discussed above, there cannot be forceful circumstances for the wife to join the husband that may not be coming in the proceedings under section 9 of the Hindu Marriage Act. Therefore the Court has to consider the case in summary way and observe what are the compelling circumstances to reside separately and to decide the petition filed for maintenance.

30. Therefore, granting the decree for restitution of conjugal rights to the husband, ifso facto shall not debar the wife from claiming maintenance. Therefore, section 125 of Cr.P.C. and section 9 of the Hindu Marriage Act are to be interpreted for which reason and object they are enacted. Here, while considering the case for grant of maintenance, the purposeful interpretation shall be made. While interpreting, applying section 9 of the Hindu Marriage Act and section 125 of Cr.P.C, both the provisions are meant for achieving social justice.

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NC: 2024:KHC:14466 Protection and preservation of institution of marriage is also social justice. Therefore, just because the decree of restitution of conjugal rights is granted and the same is not complied with by the wife, that cannot defeat the social justice given to the wife and the way of law has been provided to the wife under section 125 of Cr.P.C. Therefore, these two legislatures shall be interpreted achieving social justice in general and social protection to wife.

31. As observed above, sometimes section 9 of the Hindu Marriage Act is a tool for husband to negate maintenance to the wife and sometimes making a platform to obtain decree of divorce. Therefore, for this reasons also just because the decree of restitution of conjugal rights is passed and wife is not willing to join the husband, it does not always amount to voluntary refusal of wife to join the husband. Therefore the petition filed under section 125 of Cr.P.C. are to be dealt with independently whether the wife is entitled for maintenance or not. The Courts

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NC: 2024:KHC:14466 while considering the proceedings under section 125 Cr.P.C., has to conduct independent enquiry by appreciating the evidence which is before the Court to reach conclusion whether wife makes out a ground and fulfill conditions for grant of maintenance. There is nothing in law to bar grant of maintenance under section 125 of Cr.P.C. in case a decree of restitution of conjugal rights is possessed by the husband. There is no express bar to grant maintenance to the wife against whom a decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act has been passed, therefore there is no bar to entertain the petition for grant of maintenance.

32. The decree for restitution of conjugal rights at the hands of the husband at the most enures him to take defence in the proceedings initiated by wife under section 125 of Cr.P.C., but for the Court it shall not be a sole factor to refuse grant of maintenance to wife. Therefore the petition filed under section 125 of Cr.P.C. can be considered on its own and independently after receiving

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NC: 2024:KHC:14466 evidence on record, but without being influenced by the decree of restitution of conjugal rights.

33. Another aspect is that as observed above, if the non compliance of decree of restitution of conjugal rights, it may result into divorce by taking a ground by the husband. It is settled law that even divorced wife is entitled to claim maintenance. Therefore, it is improper and unfair to deny maintenance to wife when she becomes destitute. Accordingly the point for consideration is answered that though there is decree of restitution of conjugal rights against wife and wife does not join the matrimonial home of the husband, that does not amount to voluntary refusal/desertion of husband, barring to claim maintenance under section 125 of Cr.P.C.

34. In these cases the petitions filed by wife were dismissed solely on the reason that the husband has obtained decree of restitution of conjugal rights and wife did not join the husband, therefore amounting to voluntary desertion of husband by wife, hence, wife is not entitled

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NC: 2024:KHC:14466 for maintenance under section 125 of Cr.P.C. These findings and conclusions of the Family Courts are hereby set aside. Therefore in these three petitions wife is entitled for maintenance.

35. Now let me consider the quantum of maintenance to be granted in each case as follows:

RPPC No.104/2018.

36. In the present case the relationship between the petitioner and respondent as wife and husband is not disputed. It is also not disputed that the petitioner is legally wedded wife of the respondent. It is alleged that the relationship between the petitioner and respondent was strained. Therefore she filed petition under section 125 of Cr.P.C. for maintenance and that is dismissed. For the above stated reasons, the reasons assigned by the Family Court dismissing the petition are set aside. Thus the petitioner being wife of the respondent and is a destitute wife is entitled for maintenance and quantified as follows.

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37. The petitioner has claimed maintenance of Rs.10,000/- per month from the respondent. It is borne out from the records that the respondent husband was in the process of solemnizing second marriage with another woman. Therefore the petitioner has filed suit in O.S.No.721/2014, on the file of IV Addl. Civil Judge, Shivamogga for permanent injunction restraining the respondent to solemnize second marriage and it is stated that the said suit is pending. Therefore when this being the fact, it probablizes the fact that the respondent has tried to solemnize second marriage with another woman. It means that the respondent is a financially capable person to maintain second wife and why not legally wedded wife-petitioner. This is not controverted by the respondent. Therefore, considering the entire case on its preponderance of probabilities, the respondent shall pay maintenance to the wife. It is the duty and also pious obligation to maintain the wife and children. Here wife alone has filed petition for maintenance. The respondent being husband shall not take any excuse not to maintain

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NC: 2024:KHC:14466 his wife. Therefore it is hereby ordered the respondent shall pay maintenance amount of Rs.10,000/- per month to the petitioner from the date of petition till the life time of petitioner wife or till she re-marries. Therefore the petition in RPPC No.104/2018 is liable to be allowed accordingly.

38. In the present case the petitioners are wife and two minor children of the respondent. The relationship between the parties is not disputed. At the time of filing the petition, the 2nd petitioner

son was alive and he died on 11.09.2014 during the pendency of the petition. Therefore the Family Court has not granted maintenance to the 2nd petitioner. The Family Court has rejected the petition filed by the 1st petitioner wife and granted maintenance of Rs.6,000/- per month to the 3rd petitioner daughter till she get married.

39. The Family Court has rejected the maintenance to the 1st petitioner wife on the reason that the 1st

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NC: 2024:KHC:14466 petitioner wife is doing coolie work in the agricultural lands and also grazing cattle and hence is earning. Also another reason for rejection of maintenance to the wife is that she has not joined the husband in spite of decree of restitution of conjugal rights.

40. Just because the 1st petitioner wife goes for coolie work, the work in agricultural land and grazing cattle that does not mean that the wife is capable to earn and it is not the reason to shirk the responsibility of the husband to maintain the wife. When the wife become destitute, inevitably the wife has to work for her livelihood and for feeding the children. Therefore this does not mean that the respondent is not liable to pay maintenance. The wife and children could not await decree from the Family Court granting maintenance. Therefore for satisfying starvation of herself and children, inevitably without any alternative way, wife starts to work and therefore this is not the reason holding that the husband is not liable to

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NC: 2024:KHC:14466 pay maintenance. Therefore this approach of the Family Court is hereby set aside.

41. The respondent is proved to be teacher working in a Government Higher Primary School. Ex.P.5 is the certificate issued by the Block Education Officer, Srirangapattana, stating that the respondent husband is a Government Teacher. Ex.P.6 is the school fees paid receipts paid by the 1st petitioner giving education to her children. Further, Ex.P.7 to P.17 are the RTC extracts which prove the father of respondent is owner of agricultural land in which the respondent is having share definitely. Exs.P.18 to P.24 are the school fees paid receipts paid by the 1st petitioner wife of her children education. Therefore, when this being the evidence produced by the petitioner, it is proved that the 1st petitioner is wife and petitioners No.2 and 3 are children and respondent is working as a teacher in the Government Higher Primary School. It is defence of the respondent that the 1st petitioner's parents are financially potential persons

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NC: 2024:KHC:14466 and thus the 1st petitioner is not entitled for maintenance from the respondent. Just because the parents or other relatives of the 1st petitioner have entered into agreement of development of their land, how this is concerned to the 1st petitioner in order to

negate the petitioner to claim maintenance is not forthcoming. The parents of 1st petitioner may be financially potential persons, but that does not mean that the 1st petitioner is not entitled for maintenance from the husband. Inevitably the 1st petitioner after desertion started to live along with her parents and the parents and other relatives may be financially potential persons, but that cannot be the reason to shirk the responsibility to pay maintenance to the wife.

42. Ex.R.14 is the salary certificate of respondent showing gross salary of Rs.29,638/- . The respondent might have obtained loan such as housing loan, personal loan and other loans that would ultimately to the benefit of the respondent and therefore whatever instalments to be paid towards such loans and deductions might have been

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NC: 2024:KHC:14466 made in the salary slip of the respondent, that cannot be deducted while considering the quantum of maintenance. Ex.R.52 is the copy of sale deed of site, which proves that the respondent has purchased site in Mysuru City. The respondent might have availed loan for purchasing the said site and is paying instalments towards repayment of the said loan. But whatever instalments are paying and made deductions in the salary slip, that cannot be deducted while considering the quantum of maintenance to be determined, payable to the wife, for the reason that those loans availed or any deductions are made are ultimately to the benefit of the respondent. Therefore, considering the evidence that the respondent is a Government employee, working as a teacher in the Government Higher Primary School and as per Ex.R.14 salary certificate, issued by the Block Education Officer, Srirangapattana stating that the respondent was receiving gross salary of Rs.29,638/- as on 14.09.2015, though the deductions are shown as Rs.19,074/- and take home

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NC: 2024:KHC:14466 salary is Rs.10,564/-, such deductions cannot be considered for determining the quantum of maintenance.

43. In certain circumstances the husband makes arrangement for more quantum of deductions by creating artificial deductions so as to show lesser take home salary for the purpose of negating compensation to the wife or an attempt to make awarding lesser quantum of maintenance. Only the tax collected towards income tax and professional tax are to be deducted. Whatever the other deductions are ultimately to the benefit of the husband. Therefore, after deductions in the salary slip towards KGID, GPF, LIC, society loan, SBI loan, cannot be deducted for the purpose of quantifying the maintenance. Therefore, considering the gross salary is Rs.29,638/- and the respondent being Government servant is having other facilities and perks such as medical reimbursement, etc., therefore, for the purpose of quantifying the maintenance, gross salary minus tax paid towards income tax and professional tax is considered. Accordingly it is ordered

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NC: 2024:KHC:14466 that the respondent husband shall pay maintenance amount of Rs.10,000/- to the 1st petitioner wife and Rs.8,000/- per month to the 3rd petitioner daughter who is studying, from the date of petition till her life time in the case of 1st petitioner or she remarries and till marriage in the case of the 3rd petitioner daughter. Therefore, the petition filed by the petitioners in RPFC No.134/2017 is liable to be allowed accordingly.

RPFC No.131/2019.

44. In this case the relationship of the parties as 1st petitioner is wife and 2nd petitioner is minor daughter of the respondent is not disputed. The Family court has granted maintenance of Rs.7,000/- per month only to the 2nd petitioner daughter, but rejected claim of maintenance to the 1st petitioner wife on the ground that the 1st petitioner wife is working. The Family Court has observed and came to the conclusion that since the 1st petitioner has not honoured the decree of restitution of conjugal rights obtained by the respondent husband, and the

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NC: 2024:KHC:14466 petitioners have left the matrimonial home of the respondent, therefore rejected the claim of the 1st petitioner and granted maintenance of Rs.7,000/- per month to the 2nd petitioner daughter. The Family Court has observed that before the marriage the 1st petitioner might have been working but there is no evidence to show that as on the date of filing the petition the 1st petitioner was working and having source of income. PW.1 in her evidence deposed that she is doing fashion designing course. Just because the 1st petitioner was pursuing fashion designing course, that does not mean that the 1st petitioner wife is working and earning income and it is not the reason for shirking responsibility of the respondent husband to maintain the wife and child.

45. Upon considering the evidence on record and averments taken in the petition and statement of objection of the respondent, it is proved that the 1st petitioner is not working and does not have any source of income. Whereas it is case of the respondent husband that he is an engineer

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NC: 2024:KHC:14466 working at Mahindra Tech Company at Pune and receiving lucrative salary. The respondent has taken contention that he has purchased a plot in Pune for Rs.44,00,000/- out of his savings. Therefore, this proves that the respondent is a financially capable person. Therefore, upon considering the entire case on all its preponderance of probabilities, in the background of their pleadings and averments in the petition and admissions made in the statement of objections and evidence on record, it is proved that the respondent is an engineering graduate working in a private company and when he was able to purchase plot worth of Rs.44,00,000/- in Pune, which proves the financial capacity of the respondent. Though for the sake of assumption respondent might have purchased property worth of Rs.44,00,000/- by raising loan, unless having capacity to repay the loan either by way of interest or by equal monthly instalments, the respondent husband could not have ventured to purchase the plot worth of Rs.44,00,000/-. Therefore, this shows the financial capacity of the respondent. Therefore, the respondent

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NC: 2024:KHC:14466 husband is liable to pay maintenance. Considering the factors discussed above, it is hereby ordered that the respondent to pay maintenance amount of Rs.25,000/- to the 1st petitioner wife and Rs.10,000/- to the 2nd petitioner daughter from the date of petition till the lifetime of the 1st petitioner wife or she remarries and till the marriage in the case of 2nd petitioner daughter.

46. Therefore, for the aforesaid reasons, the petitions filed by the wife and children above stated are liable to be allowed. Hence, I proceed to pass the following:

ORDER

- i) All the three revision petitions are allowed.
- ii) The order dated 20.07.2017, passed in Crl.Misc.No.128/2016, by the Family Court, Shivamogga, is hereby set aside.
- iii) The Crl.Misc.No.128/2016, on the file of the Family Court, Shivamogga, is hereby allowed.

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iv) It is hereby ordered that the respondent husband in Crl.Misc.No.128/2016 (RPFC No.104/2018) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the petitioner from the date of filing of the petition till the life time of petitioner wife or till she re-marries.

v) The order dated 14.02.2017, passed in Crl.Misc.No.558/2013, by the Prl. Judge, Family Court, Mysuru, is hereby modified.

vi) It is hereby ordered that the respondent husband in Crl.Misc.No.558/2013 (RPFC No.134/2017) shall pay maintenance amount of Rs.10,000/- (Ten Thousand Rupees) per month to the 1st petitioner wife and Rs.8,000/- (Eight Thousand Rupees) per month to the 3rd petitioner daughter, from the date of filing of the petition till her life time in the case of 1st petitioner or she re-marries and till the marriage in the case of the 3rd petitioner daughter.

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vii) The order dated 17.05.2019, passed in Crl.Misc.No.133/2018, by the I Addl. Prl. Judge, Family Court, Mysuru, is hereby modified.

viii) It is hereby ordered that the respondent husband in Crl.Misc.No.133/2018 (RPFC No.131/2019) shall pay maintenance amount of Rs.25,000/- (Twenty-Five Thousand Rupees) per month to the 1st petitioner wife and Rs.10,000/- (Ten Thousand Rupees) per month to the 2nd petitioner daughter, from the date of filing of the petition till the lifetime in the case of the 1st petitioner wife or she re-marries and till the marriage in the case of 2nd petitioner daughter.

ix) No order as to costs.

Sd/-
JUDGE

MH

Shantadevi W/O. Shankar Kabbur vs Kumuda W/O. Abhijeet Kabbur on 23 February, 2024

Author: N.S.Sanjay Gowda

Bench: N.S.Sanjay Gowda

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NC: 2024:KHC-D:4486
CRL.P No. 101124 of 2023
C/W CRL.P No. 101138 of 2023

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 23RD DAY OF FEBRUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA
CRIMINAL PETITION NO.101124 OF 2023
C/W
CRIMINAL PETITION NO.101138 OF 2023

IN CRL.P. NO.101124 OF 2023:

BETWEEN:

1. SHANTADEVI
W/O. SHANKAR KABBUR,
AGE. 66 YEARS,
OCC. RETIRED SCHOOL TEACHER,
R/O. PLOT NO.51,
NEAR NEXA SHOWROOM,
VAIBHAV NAGAR,
TQ. & DIST. BELAGAVI-590001.

2. SHANKAR
S/O. SIDDLINGAPPA KABBUR,
AGE. 74 YEARS,
OCC. RETIRED DDPI,
R/O. PLOT NO.51,

Digitally signed
by MANJANNA

E
Location: High
Court of
Karnataka

NEAR NEXA SHOWROOM,
VAIBHAV NAGAR,
TQ. & DIST. BELAGAVI-590001.

3. AMIT S/O. SHANKAR KABBUR,
AGE. 41 YEARS, OCC, ENGINEER,
R/O. HCL TECHNOLOGIES,
ELECTRONIC CITY, PHASE-1,
TQ. & DIST. BENGALURU-560100.

... PETITIONERS

(BY SHRI GIRISH V. BHAT, ADVOCATE)

AND:

KUMUDA
W/O. ABHIJEET KABBUR,

-2-

NC: 2024:KHC-D:4486
CRL.P No. 101124 of 2023
C/W CRL.P No. 101138 of 2023

AGE. 38 YEARS, OCC. FASHION CONSULTANT,
R/O. #1658, M.G. ROAD,
VAIBHAV NAGAR, TQ. & DIST. BELAGAVI-590001.

... RESPONDENT

(BY SHRI SHIVARAJ BALLOLI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.PC.,
SEEKING TO ADMIT THE PETITION CALL FOR RECORDS AND QUASH
THE IMPUGNED APPLICATION AND THE PROCEEDINGS VIDE
ANNEXURE-A AND B MADE UNDER SECTION 12 OF D.V. ACT AND
ALL FURTHER PROCEEDINGS PURSUANT TO IT IN CRIMINAL MISC
NO.210/2021 PENDING ON THE FILE OF JMFC IV COURT BELAGAVI,
IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P. NO.101138 OF 2023:

BETWEEN:

ABHIJEET S/O. SHANKAR KABBUR,
AGE. 46 YEARS, OCC. ENGINEER,
R/O. PLOT NO.51, NEAR NEXA SHOWROOM,
VAIBHAV NAGAR, TQ. & DIST. BELAGAVI-590001.

... PETITIONER

(BY SHRI GIRISH V. BHAT, ADVOCATE)

AND:

KUMUDA W/O. ABHIJEET KABBUR,
AGE. 38 YEARS, OCC. SERVICE,
R/O. #1658, M.G. ROAD, VAIBHAV NAGAR,
TQ. & DIST. BELAGAVI-590001.

... RESPONDENT

(BY SHRI SHIVARAJ BALLOLI, ADV.)

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NO.210/2021 PENDING ON THE FILE OF JMFC IV COURT BELAGAVI,
IN THE INTEREST OF JUSTICE AND EQUITY.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON
13/02/2024, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE
COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC-D:4486
CRL.P No. 101124 of 2023
C/W CRL.P No. 101138 of 2023

ORDER

1. These petitions are filed by the husband, mother-in-law, father-in-law and brother-in-law of the respondent herein-Smt.Kumuda, challenging the initiation of proceedings by her under the provisions of the Protection of Women from Domestic Violence Act, 2005 ("the DV Act").
2. Smt.Kumuda had married Abhijeet (the petitioner in Crl.P.No.101138/2023) on 17.05.2019.
3. It is stated that this was her second marriage.
4. It appears that there was marital discord and Smt.Kumuda initiated criminal proceedings for the offences punishable under Sections 498A, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the IPC") by lodging a complaint on 28.07.2021 against her husband Abhijeet and his family members.
5. The Police after investigation proceeded to submit a final report dated 25.01.2022, in which they NC: 2024:KHC-D:4486 stated that there was no material against the mother-in- law, the father-in-law and the brother-in-law of Smt. Kumuda and there was only material against the husband.
6. However, Smt.Kumuda, about 2 months before the filing of the final report, initiated proceedings under the provisions of the Protection of the DV Act by filing an application under Section 12.
7. In this application, she has stated that she stayed with her husband and his family for a week and thereafter, the two went to Pune and were accompanied by her mother-in-law, who also stayed in Pune with them for three days. It is alleged that after reaching Pune, her mother-in-law kept taunting her and also abused her using unparliamentary language.

8. It is also admitted that after three days, her mother-in-law returned to Belagavi, and was living in Pune with her husband. She submits that during these days when they were living in Pune by themselves, her husband NC: 2024:KHC-D:4486 subjected her to immense cruelty. She also stated that due to the lockdown, they were constrained to return to Belagavi, where she was cornered by her husband and his family members in their house and was continuously harassed.

9. From the above, it is clear that Sm.Kumuda, immediately after her marriage, stayed with her in-laws in their home, initially, only for a week and thereafter stayed with her husband and her mother-in-law for only three days in Pune. It is also clear that until the lockdown, she stayed with her husband in Pune.

10. In light of this admitted position and keeping in mind the fact that Smt.Kumuda had initiated proceedings for the offences punishable under Sections 498A, 323, 324, 504 and 506 read with Section 34 of the IPC, in which the Police have concluded that there was no material found against the mother-in-law, father-in-law and brother-in-law, it is obvious that the application under NC: 2024:KHC-D:4486 the provisions of the DV Act has been filed only to harass them.

11. It is also obvious that the first round of litigation was the initiation of proceedings for the commission of offence under Section 498A, and when it was realized that in those proceedings the mother-in-law, father-in-law and brother-in-law would be exonerated, a second round of litigation has been initiated under the provisions of the DV Act.

12. In light of the fact that there are absolutely no credible allegations in the complaint against the mother- in-law, father-in-law and brother-in-law, and keeping in mind that the mother-in-law stayed with Smt.Kumuda in Pune for only three days, and that Smt.Kumuda thereafter stayed with her husband until they returned to Belagavi, it is clear that the question of any domestic violence being inflicted on her by her in-laws would not arise.

NC: 2024:KHC-D:4486

13. The proceedings, therefore, which have been initiated against her in-laws i.e., the petitioners in Crl.P.No.101124/2023 cannot be sustained and the same are accordingly quashed.

14. Crl.P.No.101124/2023 is accordingly allowed.

15. However, there are specific allegations made against the husband and the Police have also laid a charge sheet for the offences punishable under Section 498A of the IPC.

16. The averments in the application filed under the provisions of the DV Act also indicate that there are serious allegations against the husband regarding domestic violence. It would thus be inappropriate to entertain the petition filed by the husband, and consequently, Crl.P.No.101138/2023 filed by the husband is dismissed.

SD/-

JUDGE EM/CT:BCK

Abhijeet S/O Shankar Kabbur vs Kumuda W/O Abhijeet Kabbur on 23 February, 2024

Author: N.S.Sanjay Gowda

Bench: N.S.Sanjay Gowda

- 1 -

NC: 2024:KHC-D:4486
CRL.P No. 101124 of 2023
C/W CRL.P No. 101138 of 2023

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 23RD DAY OF FEBRUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA
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C/W
CRIMINAL PETITION NO.101138 OF 2023

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BETWEEN:

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W/O. SHANKAR KABBUR,
AGE. 66 YEARS,
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Location: High
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... PETITIONERS

(BY SHRI GIRISH V. BHAT, ADVOCATE)

AND:

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CRL.P No. 101124 of 2023
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... RESPONDENT

(BY SHRI SHIVARAJ BALLOLI, ADVOCATE)

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IN CRL.P. NO.101138 OF 2023:

BETWEEN:

ABHIJEET S/O. SHANKAR KABBUR,
AGE. 46 YEARS, OCC. ENGINEER,
R/O. PLOT NO.51, NEAR NEXA SHOWROOM,
VAIBHAV NAGAR, TQ. & DIST. BELAGAVI-590001.

... PETITIONER

(BY SHRI GIRISH V. BHAT, ADVOCATE)

AND:

KUMUDA W/O. ABHIJEET KABBUR,
AGE. 38 YEARS, OCC. SERVICE,
R/O. #1658, M.G. ROAD, VAIBHAV NAGAR,
TQ. & DIST. BELAGAVI-590001.

... RESPONDENT

(BY SHRI SHIVARAJ BALLOLI, ADV.)

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THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON
13/02/2024, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE
COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC-D:4486
CRL.P No. 101124 of 2023
C/W CRL.P No. 101138 of 2023

ORDER

1. These petitions are filed by the husband, mother-in-law, father-in-law and brother-in-law of the respondent herein-Smt.Kumuda, challenging the initiation of proceedings by her under the provisions of the Protection of Women from Domestic Violence Act, 2005 ("the DV Act").
2. Smt.Kumuda had married Abhijeet (the petitioner in Crl.P.No.101138/2023) on 17.05.2019.
3. It is stated that this was her second marriage.
4. It appears that there was marital discord and Smt.Kumuda initiated criminal proceedings for the offences punishable under Sections 498A, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the IPC") by lodging a complaint on 28.07.2021 against her husband Abhijeet and his family members.
5. The Police after investigation proceeded to submit a final report dated 25.01.2022, in which they NC: 2024:KHC-D:4486 stated that there was no material against the mother-in- law, the father-in-law and the brother-in-law of Smt. Kumuda and there was only material against the husband.
6. However, Smt.Kumuda, about 2 months before the filing of the final report, initiated proceedings under the provisions of the Protection of the DV Act by filing an application under Section 12.
7. In this application, she has stated that she stayed with her husband and his family for a week and thereafter, the two went to Pune and were accompanied by her mother-in-law, who also stayed in Pune with them for three days. It is alleged that after reaching Pune, her mother-in-law kept taunting her and also abused her using unparliamentary language.

8. It is also admitted that after three days, her mother-in-law returned to Belagavi, and was living in Pune with her husband. She submits that during these days when they were living in Pune by themselves, her husband NC: 2024:KHC-D:4486 subjected her to immense cruelty. She also stated that due to the lockdown, they were constrained to return to Belagavi, where she was cornered by her husband and his family members in their house and was continuously harassed.

9. From the above, it is clear that Sm.Kumuda, immediately after her marriage, stayed with her in-laws in their home, initially, only for a week and thereafter stayed with her husband and her mother-in-law for only three days in Pune. It is also clear that until the lockdown, she stayed with her husband in Pune.

10. In light of this admitted position and keeping in mind the fact that Smt.Kumuda had initiated proceedings for the offences punishable under Sections 498A, 323, 324, 504 and 506 read with Section 34 of the IPC, in which the Police have concluded that there was no material found against the mother-in-law, father-in-law and brother-in-law, it is obvious that the application under NC: 2024:KHC-D:4486 the provisions of the DV Act has been filed only to harass them.

11. It is also obvious that the first round of litigation was the initiation of proceedings for the commission of offence under Section 498A, and when it was realized that in those proceedings the mother-in-law, father-in-law and brother-in-law would be exonerated, a second round of litigation has been initiated under the provisions of the DV Act.

12. In light of the fact that there are absolutely no credible allegations in the complaint against the mother- in-law, father-in-law and brother-in-law, and keeping in mind that the mother-in-law stayed with Smt.Kumuda in Pune for only three days, and that Smt.Kumuda thereafter stayed with her husband until they returned to Belagavi, it is clear that the question of any domestic violence being inflicted on her by her in-laws would not arise.

NC: 2024:KHC-D:4486

13. The proceedings, therefore, which have been initiated against her in-laws i.e., the petitioners in Crl.P.No.101124/2023 cannot be sustained and the same are accordingly quashed.

14. Crl.P.No.101124/2023 is accordingly allowed.

15. However, there are specific allegations made against the husband and the Police have also laid a charge sheet for the offences punishable under Section 498A of the IPC.

16. The averments in the application filed under the provisions of the DV Act also indicate that there are serious allegations against the husband regarding domestic violence. It would thus be inappropriate to entertain the petition filed by the husband, and consequently, Crl.P.No.101138/2023 filed by the husband is dismissed.

SD/-

JUDGE EM/CT:BCK

Niveditha N M vs Canara Bank on 21 February, 2024

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 10064 OF 2022 (S-RES)

BETWEEN:

NIVEDITHA N M
D/O LATE MAHALINGAPPA N R,
AGED ABOUT 28 YEARS,
NO 830/40, BENAKA 14TH CROSS,
VIDYANAGARA, DAVANAGERE-577005

...PETITIONER

(BY SRI.PRAKASH SHETTY S, ADVOCATE)

AND:

1. CANARA BANK
6648, 112, JC RD, P B HALSURPETE,
NAGARATHPETE, BENGALURU, KARNATAKA 560001,
REP BY ITS CHAIRMAN AND MANAGING DIRECTOR
2. SENIOR MANGER
CANARA BANK, SME BRANCH,
HALADI ROAD, DAVANAGERE 577005
3. DEPUTY GENERAL MANGER
HRM SECTION, CANARA BANK HUBLI,
DHARWARD DISTRICT, KARNATAKA STATE-580001

...RESPONDENTS

(BY SRI.T P MUTHANNA, ADVOCATE FOR R1 TO R3)

2

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA PRAYING TO CALL FOR
RECORDS WHICH ULTIMATELY RESULTED IN NON
CONSIDERATION OF PETITIONER APPLICATION FOR
COMPASSIONATE APPOINTMENT AND DIRECT THE
RESPONDENTS BANK TO CONSIDER THE CASE OF THE

PETITIONER FOR APPOINTMENT AND ISSUE AN
APPOINTMENT ORDER ON COMPASSIONATE GROUND.

THIS PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 20.02.2024, COMING ON FOR
PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT
MADE THE FOLLOWING:

ORDER

Petitioner being married daughter of deceased employee of first respondent-Bank is seeking a direction against the respondent-Bank to give appointment on compassionate grounds.

2. Petitioner's father was working as a Clerk in first respondent-Bank. Petitioner's father on account of illness died on 1.5.2015. Petitioner filed an application seeking appointment on compassionate grounds on 24.7.2015. The present petition is filed alleging inaction on the part of the respondent-Bank in not processing the application submitted by the petitioner seeking appointment on compassionate grounds.

3. Respondent-Bank has filed a memo and has furnished the details of the terminal benefits paid to the defendants. The memo also indicates that widow of the deceased is getting family pension of Rs.25,447/-.

4. The learned counsel for the petitioner reiterating the grounds urged in the writ petition has placed reliance on the judgment rendered by the Division Bench in W.A.No.1030/2021 disposed of on 23.2.2022. Referring to the principles laid down by the Division Bench he would contend that the respondent-Bank cannot discriminate on the ground that petitioner is a married daughter. He has also placed reliance on the judgment rendered by Punjab and Haryana High Court in the case of State of Punjab and another .vs. Amarjit Kaur [LPA-462- 2021(O&M) disposed of on 25.1.2023].

5. Per contra, learned counsel appearing for respondent-Bank referring to clause 3 of Compassionate Appointment Scheme would point out that employment on compassionate grounds can be considered provided the son or daughter is found to be wholly dependant on the deceased.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for respondent-Bank.

7. The petitioner's contention that merely because she is a married daughter will not in itself constitute a bar to seek employment on compassionate grounds. This contention cannot be acceded. The compassionate appointment scheme of respondent-Bank has not contemplated any bar in the context of marital status of a daughter. The eligibility criteria is that the daughter should be wholly dependant on the deceased employee. While incidentally deciding the dependency, the management and the Court are bound to examine the marital status of daughter. Merely because the status of a daughter is taken into consideration that in itself would not constitute discrimination.

8. It is pertinent to draw upon the judgment of the division bench of this Court in the case of Mrs. Megha.J .vs. Life Insurance Corporation of India (LIC) and another [W.A.No.891/2023(S-RES),DD.27.9.2023], which elucidates the legal interpretation of dependency and the rationale behind precluding married daughters from eligibility for compassionate appointment. Para 4 of the judgment reads as under:

"4. Learned Single Judge has rightly relied upon the Apex Court decision in State of Maharashtra vs. Madhuri Maruti Vidhate AIR 2022 SC 5176 to the effect that a married daughter residing in the matrimonial home ordinarily cannot be treated as a dependent on her father. Our scriptures injunct "bharta rakshati yavvane..." literally meaning that it is the duty of husband to provide maintenance to his dependent wife. That is how our legislations too are structured e.g., Section 125 of the Code of Criminal Procedure, 1973 (applicable to all regardless of religions), Sections 24 & 25 of the Hindu Marriage Act, 1955 (applicable to Hindus, in a broad sense of the term), Section 37 of the Divorce Act, 1869 (applicable to Christians), Section 40 of the Parsi Marriage and Divorce Act, 1936 (applicable to Parsis), Section 20 of the Protection of Women from Domestic Violence Act, 2005 (applicable to all persons regardless of religion and marital status), Sections 36 & 37 of the Special Marriage Act, 1954, The Muslim Women (Protection of Rights on Marriage) Act, 2019 (applicable to Muslims wives), etc., have been structured. No binding rule or ruling that guarantees right of maintenance to the married daughter residing with the husband qua the father, is brought to our notice."

The judgment emphasizes the duty of a husband to provide maintenance to his wife and reaffirms the principle that compassionate appointment is intended to alleviate the immediate financial distress of the deceased's family, rather than confer entitlements or privileges based on marital status.

9. The petitioner's argument posits parity between married/unmarried daughters and married sons in the context of compassionate appointment eligibility. However, this assertion overlooks the fundamental distinction between inheritance rights and compassionate appointment criteria. While the principle of equality among daughters and sons may find resonance in matters of inheritance or succession, it does not translate directly to eligibility for compassionate appointment. The principles governing compassionate appointment eligibility pivot on considerations of dependency, financial need, and the humanitarian imperative to alleviate acute distress, rather than notions of birthright or inheritance. Therefore, the petitioner's plea for parity between married/unmarried daughters and married sons in the context of compassionate appointment lacks legal merit and is not supported by the prevailing legal framework.

10. Furthermore, the eligibility for compassionate appointment is contingent upon a demonstration of severe hardship and an inability to maintain oneself or one's family in the absence of the deceased. Importantly, the eligibility criteria for compassionate appointment do not draw a distinction between married/unmarried daughters and married sons. Instead, the focus is on identifying individuals who were dependent on the deceased for their day-to- day expenses and who

would consequently face significant financial adversity in the absence of the deceased's support. Therefore, the object of compassionate appointment is firmly rooted in addressing the immediate financial crisis faced by families following the demise of a family member, without conferring appointment as a matter of right or inheritance. This principle transcends marital distinctions and is guided by the overarching objective of extending support to individuals who are genuinely in need due to their dependency on the deceased for day-to-day expenses.

11. The essence of compassionate appointment lies in addressing the immediate financial distress experienced by the family in the aftermath of the employee's demise. The term "dependent" within the context of compassionate appointment denotes family members who were reliant on the deceased employee for financial support. While compassionate appointment aims to alleviate the economic burden on such dependents, it does not extend to family members who have since established independent means of support or who no longer face financial hardship.

12. The petitioner's father having passed away in 2015 does not automatically entitle the petitioner to compassionate appointment in 2024. The eligibility for such appointment hinges upon the continued financial need of the family and the absence of alternative means of sustenance for the petitioner. While the representation was indeed submitted promptly, the significant delay in taking action or reviewing the request has resulted in its validity and relevance being compromised. The primary objective of compassionate appointment is to address the immediate financial constraints faced by the family following the death of the government servant or employee. However, the prolonged delay in addressing the petitioner's request has allowed for a substantial amount of time to elapse without providing the necessary assistance or relief to the family.

13. During this extended period, the financial circumstances and needs of the petitioner's family may have undergone significant changes. The initial urgency and immediacy of the financial constraints experienced by the family may no longer be as pressing or relevant after such a prolonged period. Therefore, if the petitioner's family has been self-sufficient and able to maintain themselves without facing significant financial constraints since the demise of the deceased employee, they may not be considered eligible for compassionate appointment as the primary objective of providing immediate financial relief would not be applicable in the present case.

14. The petitioner does not possess eligibility criteria. She has no legal right to seek appointment on compassionate grounds. Respondent-Bank is not under obligation to consider petitioner's representation.

15. Additionally, it is worth noting that the dependents of the deceased have already obtained terminal benefits. The counsel for the respondent-bank has submitted the specifics of the terminal benefits and pension received by the deceased's wife. It would be beneficial for this court to extract the aforementioned memo, which reads as under:

"Terminal Benefit	Amount	Date
Staff Provident Fund	Rs .11,27,941.46/-	16.06.2015
SPF arrears as per 10th BPS	Rs .43,363.71/-	25.07.2015
Gratuity	Rs . 9,09,303.74/-	16.06.2015

Arrears of gratuity as per 10th BPS	Rs .43,774.03/-	26.08.2015
Staff Welfare Fund Deposit	Rs .1,80,515/-	15.06.2015
PL Encashment	Rs .4,63,436.46/-	25.07.2015
Death relief Amount	Rs .1,50,000/-	23.07.2015
Death Relief fund	Rs .35,000/-	22.07.2015
Total:	Rs .29,53,334.40/-	

Further, the amount of family pension being paid to Yogamani: Rs.25,447/-"

These benefits, presumably provided by the deceased's employer, are typically intended to provide a measure of financial security to the family following the employee's demise. This monthly family pension represents a significant source of financial support for the deceased's family. It is intended to provide ongoing financial assistance to the family following the loss of the deceased's income. Given the existence of this substantial monthly pension, coupled with the receipt of terminal benefits, it can be reasonably inferred that the financial needs of the deceased's family, are being adequately met.

16. It is pertinent to acknowledge that while the Apex Court has consistently ruled that the receipt of terminal benefits and pension cannot serve as grounds to deny compassionate appointment, the primary objective of compassionate appointment, which is to address the immediate financial distress faced by the family following the demise of a family member, appears to have been met. The substantial compensation received by the dependents ensures their financial stability and ability to sustain themselves without necessitating additional support through compassionate appointment.

17. For the reasons stated supra, I proceed to pass the following:

ORDER The writ petition is dismissed.

Sd/-

JUDGE *alb/-

Smt. Chaitra vs Sri. Chandrashekhar M Poojar on 21 February, 2024

-1-

NC: 2024:KHC:7505
CP No. 331 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE C.M. POONACHA
CIVIL PETITION NO. 331 OF 2022
BETWEEN:

1. SMT. CHAITRA
WIFE OF SRI CHANDRASHEKAR MARIYAPPA PUJAR
AGED ABOUT 33 YEARS
R/AT DOOR NO.75,
3RD CROSS, 3RD MAIN
VIDHYARANYANAGAR,
MAGADI ROAD, TOLL GATE,
BANGALORE 560 023

...PETITIONER
(BY SRI. ARUN KUMAR Y H., ADVOCATE)

AND:

1. SRI. CHANDRASHEKAR M POOJAR
SON OF MARIYAPPA
AGED ABOUT 25 YEARS
R/AT BASAVESHWARANAGAR C BLOCK
3RD CROSS, VINAYAKANAGAR
HAVERI 581110

Digitally signed
by BHARATHI
S

...RESPONDENT

Location:
HIGH COURT
OF

KARNATAKA

(BY SRI. PRAKASHA M., ADVOCATE)

THIS CIVIL PETITION IS FILED UNDER SEC.24 OF CPC,
PRAYING TO TRANSFER THE PETITION IN M.C.NO.113/2022 FILED
BY THE RESPONDENT AGAINST THE PETITIONER WHICH IS PENDING
BEFORE THE PRINCIPAL JUDGE, FAMILY COURT, HAVERI TO
PRINCIPAL JUDGE, FAMILY COURT, BENGALURU AND TRY THE SAME
IN ACCORDANCE WITH LAW AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The present petition is filed by the wife seeking for transfer of MC No.113/2022 pending on the file of Principal Judge, Family Court, Haveri to the Court of the Principal Judge, Family Court, Bengaluru.

2. For the sake of convenience, the parties herein are referred to as per their relationship.
3. The relevant facts necessary for consideration of the present petition are that the marriage between the parties was solemnized on 15.5.2008 and from the said wedlock, a son was born to the parties who is aged 14 years as on the date of the petition. Due to various reasons, the parties were residing separately since the birth of their daughter.
4. The petitioner - wife has filed Crl.Misc.No.1859/2010 under the provisions of the Protection of Women from Domestic Violence Act, 2005 which is pending before the III ACMM, Bengaluru and that the Respondent appeared in the said proceedings and which was culminated in a compromise entered into between the parties. However, due to various reasons, the disputes again arose between the NC: 2024:KHC:7505 parties and the respondent-husband has filed M.C. No.113/2022 under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for divorce, which is pending before the Principal Judge, Family Court, Haveri. Seeking for transfer of M.C. No.113/2022 the present petition is filed by the wife.
5. Learned counsel for the petitioner submits that the son of the parties is under the care and custody of the wife and he is pursuing his education at Bengaluru. That the wife is working as a Security Guard at Bengaluru Metro Railway Corporation Ltd.,(BMRCL) and it will be very difficult for her to manage her work as well as the care and custody of the son as also travel to Haveri for the purpose of contesting the proceedings. That, the distance between Bengaluru and Haveri is about 400 kms. Hence, he seeks for allowing of the petition and granting of the reliefs as sought for.
6. Per contra, learned counsel for the respondent vehemently opposes the present petition and submits that no grounds have been made out to transfer the proceedings initiated by the husband. He further submits that NC: 2024:KHC:7505 father of the husband is aged and he is required to take care of his father and seeks for dismissal of the same.
7. The submissions of the learned counsel for the parties have been considered and the material on record has been perused. The question that arises for consideration is, whether the relief sought for in the present petition is required to be granted?

8. The relationship between the parties as also the pendency of the legal proceedings are a matter of record.

9. The wife is gainfully employed at Bengaluru and the care and custody of the son is with the wife. The distance between Bengaluru and Haveri is about 400 kms. Hence, it is clear that the wife will be put to great hardship if she is required to travel to Haveri to contest the proceedings initiated by the husband.

10. On the other hand, although some hardship will be caused to the husband if he is required to travel to Bengaluru for the purpose of prosecuting the proceedings initiated by him, having regard to the fact that he is gainfully employed and having an independent source of income, as also having regard NC: 2024:KHC:7505 to the settled proposition of law as held by the Hon'ble Supreme Court in the case of N.C.V. AISHWARYA VS A.S.SARAVANA KARTHIK SHA1 that while considering cases for transfer of matrimonial proceedings, the convenience of wife will have to be given precedence to, it is just and proper that the relief sought for in the present petition be granted. Accordingly, the question framed for consideration is answered in the affirmative.

11. In view of the aforementioned, the following order is passed:

ORDER i. The above petition is allowed;

ii. MC No.113/2022 pending on the file of the Principal Judge, Family Court, Haveri shall stand transferred to the Court of the Principal Judge, Family Court, Bengaluru. It shall be open to the Principal Judge, Family Court, Bengaluru, to assign the transferred case to an appropriate Court;

iii. Both the parties shall appear before the Principal Judge, Family Court, Bengaluru on 25.03.2024 without AIR ONLINE 2022 SC 1268 NC: 2024:KHC:7505 the requirement of any further notice being issued in this regard;

iv. Consequent to transfer, the transferee Court shall conduct further proceedings in accordance with law;

v. All contentions of the parties are left open.

Sd/-

JUDGE BS

Seema H Shervegar vs Chief Secretary on 20 February, 2024

Author: S Sunil Dutt Yadav

Bench: S Sunil Dutt Yadav

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NC: 2024:KHC:7079
WP No. 20571 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV
WRIT PETITION NO. 20571 OF 2023 (LB-RES)

BETWEEN:

SEEMA H. SHERVEGAR,
W/O HARSHAVARDHAN SHERIGAR,
AGED ABOUT 56 YEARS,
PROPRIETOR LAKSHMI HOME INDUSTRIES,
NH-66, OPP. BHARATH PETROLEUM,
TALLUR VILLAGE,
KUNDAPURA TALUK,
UDUPI DISTRICT-570 230.

...PETITIONER

(BY SRI. PAVANA CHANDRA SHETTY H., ADVOCATE)

AND:

Digitally signed
by V KRISHNA

Location: High
Court of
Karnataka

1. CHIEF SECRETARY,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU-560 001.
2. PRL. SECRETARY,
PANCHAYATH RAJ AND RURAL DEVELOPMENT
DEPARTMENT, GOVERNMENT OF KARNATAKA,
M.S. BUILDING,
BENGALURU-560 001.
3. DEPUTY COMMISSIONER,
UDUPI DISTRICT,
RAJATHADRI, UDUPI.

4. ASSISTANT COMMISSIONER,
KUNDAUPRA SUB DIVISION,
KUNDAPURA, UDUPI DISTRICT.
5. TAHSILDAR,
TALUK OFFICE,
KUNDAPURA TALUK,
UDUPI DISTRICT.
6. EXECUTIVE OFFICER,
TALUK PANCHAYATH,
KUNDAPURA TALUK
UDUPI DISTRICT.
7. PANCHAYATH DEVELOPMENT OFFICER (PDO),
TALLUR GRAMA PANCHAYATH,
TALLUR VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT.
8. THE PRESIDENT,
TALLUR GRAMA PANCHAYATH,
TALLUR VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT.
9. STANDING COMMITTEES
AS PER SECTION 61 OF THE
GRAM SWARAJ AND PANCHAYATH RAJ ACT, 1993,
THE SOCIAL JUSTICE COMMITTEE,
REP. BY ITS PRESIDENT,
TALLUR GRAMA PANCHAYATH,
TALLUR VILLAGE, KUNDAPURA TALUK,
UDUPI DISTRICT.
10. THE KARNATAKA STATE POLLUTION CONTROL
BOARD,
PARISARA BHAVAN, NO.49,

CHURCH STREET,
BENGALURU-560 001.
REP. BY ITS MEMBER SECRETARY.

. . . RESPONDENTS

(BY SMT. SARITHA KULKARNI, HCGP FOR R1 TO R5;
SRI. ASHOK N. NAYAK, ADVOCATE FOR R6 TO R8;
SRI. RAGHUNATHA K., ADVOCATE FOR R9;
SRI. GURURAJ JOSHI, ADVOCATE FOR R10)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER DATED 11.09.2023 BEARING ITS
NO.264/23-24 PASSED BY THE R-7/TALLUR GRAMA
PANCHAYATH PRODUCED AS ANNEXURE-A AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has sought for setting aside the order dated 11.09.2023, whereby it is informed that the Gram Panchayath has resolved to cancel the building license in its meeting dated 27.07.2023. The petitioner has sought for a direction to respondent No.7 to renew the license for a period of 2023-24 to the petitioner's factory. The petitioner has also sought for direction to respondent No.9 not to harass the petitioner. The petitioner has also sought NC: 2024:KHC:7079 for a direction to respondent No.7 to permit the petitioner to complete the restructuring of the factory unit.

2. In terms of Annexure-'A', the Panchayath Development Officer has issued notice to the petitioner and has communicated that as regards the building license granted on 30.01.2023, it was resolved by the Panchayath authority by resolution dated 27.07.2023 to cancel the building license in light of the complaint made by the villagers on 02.05.2023 and subsequently on 25.05.2023 and 26.06.2023. It is submitted that such action is taken on the basis of the opinion of the advocate as also the resolution of the Social Justice Committee. Accordingly, it is submitted that the building license has been cancelled.

3. It must be noticed that though various contentions have been raised by the respondents relating to pollution and other permissions required for continuance of the business and activity of the petitioner, in light of the present petition being instituted by the petitioner, question of granting relief to the respondent on NC: 2024:KHC:7079 the basis of the objections raised would not arise and the scope of the present writ petition cannot be enlarged beyond the consideration of the validity of the impugned action.

4. Insofar as Annexure-'A' is concerned, it must be noticed that reliance is placed on the resolution of the Gram Panchayath. The permission that is granted by way of building license is in terms of Annexure-'D' granted on 30.01.2023. It is not in dispute that this permission that is granted on 30.01.2023 is in terms of Section 64 of the Karnataka Gram Swaraj and Panchayath Raj Act, 1993 (for short '1993 Act'). Section 64 of the 1993 Act reads as follows:

"Section 64. Regulation of the erection of buildings.- (1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing

building 1[2[or erect advertisement hoarding] or set up mobile towers a top or alongside or in any vacant space within the premises] or reconstruct any building without the written permission of the Grama Panchayat.

NC: 2024:KHC:7079 The permission may be granted on payment of such fees as may be specified by bye-laws.

(2) If the Grama Panchayat does not, within sixty days from the receipt of the application determine whether such permission should be given or not and communicate its decision to the applicant, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

(3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Grama Panchayat may, whether any action is taken or not against such person under section 298,-

(a) direct that the building, alteration or addition be stopped; or

(b) by written notice require within a reasonable period to be specified therein, such building, alteration or addition to be altered or demolished as it may deem necessary for the promotion of public health or the prevention of danger to life or property.

NC: 2024:KHC:7079 (4) In the event of non-compliance with the terms of any notice under clause (b) of sub- section (3) within the period specified in the notice, it shall be lawful for the Grama Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Grama Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under Section 199.

(5) An appeal shall lie to the 3[Executive Officer] from any order or direction or notice of the Grama Panchayat under sub-section (1), (2) or (3) and his decision on such appeal shall be final.

[(5-A) Gram Panchayats shall strictly comply with the provisions of the Town and Country Planning Act, 1961 in the matter of issue of building license or approvals of housing or residential layouts. Any approval in violation of any of the provisions of the Town and Country Planning Act, 1961 shall be construed as "misconduct" for which the concerned officer or official shall be liable for disciplinary action.] (6) Any appeal under sub-section (5) pending before the Public Works and Amenities NC: 2024:KHC:7079 Committee of the Zilla Parishad shall on the date of commencement of the Karnataka Panchayat Raj Act, 1993 stand transferred to the Assistant Commissioner and such appeal shall be decided by him as if it had been filed before him."

5. Section 64 of the 1993 Act refers to the regulation of erecting of buildings. Insofar as the resolution passed, copy of which is produced by the respondent - Panchayath authorizing cancelling of building license, it must be noticed that there is no specific provision for cancellation of building license in terms of Section 64 of the 1993 Act. Even otherwise, a perusal of the said resolution would indicate various factors taken note of leading to the passing of resolution relating to use of the land other than for which conversion order has passed etc., It must be noticed that once the license is granted on 30.01.2023, unless there is an element of fraud or any other similar reason, question of revoking license in the absence of any specific statutory provision would not arise.

NC: 2024:KHC:7079

6. In the present case, there is no contention of commission of fraud but what is made out from the resolution appears to be certain lapses relating to the functioning of the petitioner's business. Only on the point that grounds are not made out for cancellation of the building license, the order at Annexure-'A' is required to be set aside.

7. Insofar as the contention that the Gram Panchayath has relied on the proceedings of the Social Justice Standing Committee in arriving at such conclusion. Section 61(iii)(b) of the 1993 Act reads as follows:

"Section 61 (iii) Social justice standing committee for.-

(b) welfare of women and children. The social justice committee shall address women's concerns and issues such as the empowerment of women by achieving their social, cultural and economic development and to protect them against crimes of domestic violence, sexual harassment etc., within the Gram Panchayat. Functions of the social justice committee shall include tendering of advice to the panchayat on promoting gender

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NC: 2024:KHC:7079 friendly programs by ensuring adequate facilitations for women at schools, offices, factories, hospitals and other public places and go about their daily lives in freedom and dignity:"

8. Clearly the scope of the power conferred on the committee would be to further the interests of women and address women's concerns and cannot be used to recommend regarding cancellation of building license. Prima-facie the functions of the Social Justice Standing Committee as provided under Section 61(iii) of the 1993 Act cannot be extended so as to voice its opinion regarding building license granted as the grant of building license comes outside the purview of such committee's functioning.

9. Though it is noticed that the validity of the resolution is not challenged, the order dated 11.09.2023 at Annexure-'A' reflecting the conclusion of the resolution having been challenged that

would be sufficient for considering the relief sought for.

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NC: 2024:KHC:7079

10. Though various other contentions have been raised, the said questions are not open for adjudication as what is in issue is only the validity of Annexure-'A'. All other contentions of both sides regarding other reliefs not adverted to herein and as regards contentions raised by the respondents in their pleadings are kept open to be taken up in the appropriate proceedings. Accordingly, Annexure-'A' is set aside in terms of the above discussion.

11. Insofar as clause 12 at Annexure-'D' of the building license which provides for cancellation of license is concerned, learned counsel Sri. Ashok N. Nayak appearing for the respondents submits that in case of any violation of the conditions imposed while granting license at Annexure- 'D', same could be cancelled.

12. However such condition cannot be construed as providing power for cancellation of license upon a violation of condition. If there is any deviation from the conditions imposed in the license, it cannot lead to cancellation of license when construction is already put up but

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NC: 2024:KHC:7079 appropriate proceedings to address the deviation if any could be taken up. Other prayer at clause (c) is kept open to be adjudicated in the appropriate proceedings.

Accordingly, petition is disposed off. In light of disposal of the petition, pending I.A.s do not survive for consideration.

Sd/-

JUDGE MCR

Smt. Raziyabegum Shaik vs Shri Wasim Shaik on 19 February, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

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NC: 2024:KHC-D:3895
CRL.RP No. 100440 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S.VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 100440 OF 2023 (397)

BETWEEN:

SMT. RAZIYABEGUM SHAIK W/O WASIM SHAIK,
AGED ABOUT 34 YEARS, OCC: HOME MAKER,
RESIDING AT PLOT NO.1259,
SAHYADRI NAGAR, BELAGAVI, PIN-591108

...PETITIONER

(BY SRI SURAJ S. MUTNAL, ADVOCATE)

AND:

1. SHRI WASIM SHAIK, S/O KAMALUDDIN SHAIK ,
AGE:35 YEARS, OCC: PRIVATE SERVICE,
RESIDING AT PLOT NO. 1259,
SAHYADRI NAGAR, BELAGAVI-591108.
NOW AT PLOT NO. 205,
NOOR APARTMENT, VAISHALI NAGAR,
YOGESHWAR WEST, MUMBAI,
MAHARASHTRA. PIN 400068.

2. SMT. NASIMA SHAIK, W/O KAMALUDDIN SHAIK,
OCC: HOME MAKER, AGE: 61 YEARS,
R/O: PLOT NO.1259, SAHYADRI NAGAR,

ANNAPURNA
CHINNAPPA
DANDAGAL

Digitally signed by
ANNAPURNA
CHINNAPPA
DANDAGAL
Date: 2024.02.21

BELAGAVI-591108.NOW AT PLOT NO. 205,

NOOR APARTMENT, VAISHALI NAGAR,

11:08:51 +0530

YOGESHWAR WEST, MUMBAI.
MAHARASHTRA. PIN 400068.

3. SMT. NAFISA BALBALI W/O SHOYAB BALBALI,
AGE: 38 YEARS, OCC: HOME MAKER,
RESIDING AT PLOT NO 205,
NOOR APARTMENT, VAISHABLI NAGAR,
YOGESHWARI WEST, MUMBAI,
MAHARASHTRA. PIN 400068.

... RESPONDENTS

(BY SRI S.H.YADWAD, ADVOCATE)

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NC: 2024:KHC-D:3895
CRL.RP No. 100440 of 2023

THIS CRIMINAL REVISION PETITION IS FILED U/SEC. 397 R/W 401 OF CR.P.C. SEEKING TO CALL FOR RECORDS IN CRIMINAL APPEAL NO. 130/2023 ON THE FILE OF V ADDL. DISTRICT AND SESSIONS JUDGE AT BELAGAVI AND ALLOW THIS PETITION AND SET ASIDE THE ORDER PASSED BY V ADDL. DISTRICT AND SESSIONS JUDGE AT BELAGAVI IN CRL.A 130/2023 DATED 26.07.2023 CERTIFIED COPY OF WHICH IS PRODUCED AS ANNEXURE-F.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal revision petition under Section 397 read with Section 401 of the Criminal Procedure Code (for short, 'the Cr.P.C.') is filed by the wife challenging the order dated 26.07.2023 passed by the Court of V Additional District and Sessions Judge, Belagavi, in Criminal appeal No.130/2023.

2. Heard the learned counsel for the parties.

3. The petitioner/wife had initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the D.V.Act') before the Court of IV JMFC Court, Belagavi. In the said proceedings, she also had filed an application in I.A.No.1 NC: 2024:KHC-D:3895 under Section 23 of the D.V.Act, with a prayer to pay the interim ex-parte maintenance of Rs.12,000/- . The said application was partly allowed by the trial Court vide order dated 27.04.2023 passed in Criminal Misc. No.38/2022. The respondent had challenged the said order before the appellate Court in Criminal Appeal No.130/2023. The appellate Court by impugned order dated 26.07.2023 has partly allowed the appeal and has modified the interim order of maintenance passed by the trial Court and quantum of interim maintenance amount is reduced from Rs.8,000/- to Rs.6,000/-In addition to this the appellate Court has also directed the trial Court to delete the names of respondent Nos.3 and 4 from array of party. Being aggrieved by the said order passed by the

appellate Court in Criminal Appeal No.130/2023 dated 26.07.2023, the petitioner/wife is before this Court.

4. Learned counsel for the petitioner submits that the appellate Court was not justified in reducing the quantum of interim maintenance amount from Rs.8,000 to Rs.6,000/- . He also submits that in view of the proviso to NC: 2024:KHC-D:3895 Section 2(q) of the D.V.Act, the appellate Court was not justified in directing the trial Court to delete the names of respondent Nos.3 and 4 from the array of party. Accordingly, he prays to allow the petition.

5. Learned counsel appearing for the respondent has opposed the prayer made in this petition. He submits that the income of the respondent No.1-husband has not been proved by the petitioner/wife. He is only working as supervisor and earning a sum of Rs.20,000/- per month. Accordingly, he prays to dismiss the petition.

6. Material on record would go to show that the petitioner herein has specifically pleaded before the trial Court that her husband had cheated her at the time of marriage stating that he was an engineer and subsequently she came to know that he was only a supervisor. The respondent/husband has pleaded before the trial Court that he is only working as a supervisor and his monthly income is Rs.20,000/- per month. The petitioner has not produced any material at this stage NC: 2024:KHC-D:3895 before the trial Court to prove the income of the respondent No.1/husband. Therefore, I am of the view that the appellate Court was fully justified in reducing the quantum of interim maintenance awarded to the petitioner/wife from Rs.8,000/- to Rs.6,000/- . Material on record would go to show that the petitioner is a qualified lady, who has completed her Bachelors of Arts degree.

7. Insofar as the order passed by the appellate Court directing the trial Court to delete the names of respondent Nos.3 and 4 from the proceedings is concerned, having regard to the proviso to Section 2(q) of the D.V.Act which clearly states that the aggrieved party can file a complaint even against a relative of husband or male partner, the petitioner can maintain the proceedings under Section 12 of the D.V. Act even as against the respondent nos.3 and 4.

8. The Hon'ble Apex Court in the case of SOU. SANDHYA MANOJ WANKHADE VS MANOJ BHIMRAO WANKHADE & ORS reported in (2011) 3 SCC 650, has NC: 2024:KHC-D:3895 held that the term respondent includes the term female relative also and therefore, the appellate Court was not justified in directing the trial Court to delete the names of respondent Nos.3 and 4 on the ground that they do not come within the meaning of respondent as defined under Section 2(q) of the D.V.Act. Accordingly, the following:

ORDER The criminal revision petition is partly allowed. The order passed by the Court of V Additional District and Sessions Judge, Belagavi in 130/2023 dated.26.07.2023, insofar as it relates to directing the trial Court to delete the names of respondent Nos.3 and 4 from the proceeding is set-aside. Remaining part of the order remains unaltered.

In view of the disposal of the petition, I.A.no.2/2023 does not survive for consideration.

Sd/-

JUDGE AC

Sunil S/O Suresh Chavan vs Deepali W/O Sunil Chavan on 19 February, 2024

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CRL.RP No.100131 of 2021

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S.RACHAIAH

CRIMINAL REVISION PETITION NO. 100131 OF 2021
BETWEEN:

SUNIL
S/O SURESH CHAVAN
AGED ABOUT 35 YEARS,
OCC: CRPF POLICE,
RESIDING AT SORADI,
TQ: JATH,
DISTRICT SANGLI,
CURRENTLY RESIDING AT JANAKAPURI,
NAVADELHI.

...PETITIONER

(BY SRI. ANKIT R.DESAI, ADVOCATE FOR
SRI. MALLIKARJUNSWAMY B.HIREMATH)

AND:

1. DEEPALI
W/O SUNIL CHAVAN
AGED ABOUT 24 YEARS,
OCC: HOUSEHOLD,
RESIDING AT SORADI,
TQ: JATH,
DIST: SANGALI,
CURRENTLY AT NAMADEV NIVRUTTI BEDGE,
AINAPUR, TQ: ATHANI,
DIST: BELAGAVI.

2. SURESH
S/O KRUISHNA CHAVAN
AGED ABOUT 59 YEARS,
OCC: AGRICULTURE,

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CRL.RP No.100131 of 2021

RESIDING AT SORADI ,
TQ: JATH,
DIST: SANGALI.

3. SMT. SHAKUNTAL
W/O SURESH CHAVAN
AGED ABOUT 54 YEARS,
OCC: HOUSEHOLD,
RESIDING AT SORADI,
TQ: JATH,
DIST: SANGALI.

... RESPONDENTS

(BY SRI. YASH R.NADAKARNI, ADVOCATE FOR
SRI. VITTAL S.TELI, ADVOCATE FOR R1;
R2 AND R3-ARE SERVED NOTICE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397
R/W 401 OF CR.P.C., SEEKING TO SET ASIDE THE ORDER
DATED 03/04/2021 PASSED BY V ADDL. DISTRICT AND
SESSIONS JUDGE, BELAGAVI IN CRIMINAL APPEAL
NO.311/2018 AND DISMISS THE APPLICATION FILED UNDER
SECTION 12 OF PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005 FILED BY RESPONDENT NO.1.

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD THROUGH PHYSICAL HEARING / VIDEO
CONFERENCE AND RESERVED ON 23.11.2023
BEFORE THE DHARWAD BENCH, COMING ON FOR
PRONOUNCEMENT OF ORDER, BEFORE THE PRINCIPAL BENCH
OF BENGALURU, THROUGH VIDEO CONFERENCE, THIS DAY,
THE COURT MADE THE FOLLOWING:

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CRL.RP No.100131 of 2021

ORDER

1. This Criminal Revision Petition is filed by the petitioner/respondent No.1 seeking to set aside the order dated 03.04.2021 passed in Crl.A No.311/2018 by V Additional District and Sessions Judge, Belagavi.
2. The rank of the parties in the Trial Court henceforth will be considered accordingly for convenience. Brief facts of the case:

3. The marriage between the petitioner and respondent No.1 was solemnized on 29.04.2013 at Soradi Village of Jath Taluk, Maharashtra. It is stated that the petitioner and respondent No.1 lived together happily for about two years. Thereafter, the respondents started harassing the petitioner both physically and mentally without providing basic necessities to her. As per the averments of the complaint, the petitioner has been subjected to harassment both physically and mentally and she was being insulted by respondent No.1 for having not brought the additional dowry of Rs.1,00,000/- and also gold from her parents. The petitioner hoping that the matter would be settled and she would get a good life from her matrimonial home. However, the said hope left unnoticed and remained as dream. On 17.04.2016, the respondents said to have assaulted and abused the petitioner and thrown her out of the house. Therefore, she has lodged a complaint before the police. After she lodged a complaint, her in-laws and husband have threatened her with dire consequences.

4. The petitioner tolerated all the trauma caused to her by the respondent No.1, 2 and 3. Being aggrieved by the harassment and cruelty, she has to live with her parents. Therefore, the petitioner had preferred a petition before the Trial Court in Crl.Misc.No.249/2016 under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V Act') seeking for various relief under the Act.

5. The Trial Court after considering the evidence of all the witnesses and also perused the documents produced by the parties concluded that the petitioner has not made out a case for maintenance or any other relief and dismissed the petition. Being aggrieved by the same, the appellant had preferred an appeal before the Appellate Court. The Appellate Court after appreciating the fact and evidence on record, opined that respondent No.1 herein has made out a case to get the relief. Accordingly, the Appellate Court directed the petitioner to pay monthly maintenance of Rs.10,000/- to the appellant / respondent No.1. Being aggrieved by the same, the petitioner herein has preferred this Revision Petition.

6. Heard Sri.Ankit R.Desai, learned counsel appearing on behalf of Sri.Mallikarjun Swamy.B Hiremath, learned counsel for the petitioner and Sri.Yash.R Nadkarni, learned counsel appearing on behalf of Sri.Vittal S.Teli, learned counsel for respondent No.1.

7. It is the submission of the learned counsel for the petitioner that it is an admitted fact that the petitioner and respondent No.1 are husband and wife respectively. Respondent No.1 deliberately and intentionally picked up quarrel with her husband and in-laws and left the matrimonial home and started residing with her parents. The allegations made against her husband and in-laws are baseless and absurd and no complaint has been lodged against her husband and in-laws regarding demand of dowry or cruelty or harassment.

8. It is further submitted that the petitioner herein working at CRPF police as Jawan and earlier, both the petitioner and respondent No.1 were residing at Jarkhand for four months. Thereafter, the petitioner was transferred to Delhi and took respondent No.1 to Delhi. When respondent No.1 was living in Delhi, her father and uncle went to Delhi and took her to Ainapur without giving proper reason. The petitioner herein had filed a petition for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act. The Court granted decree in favour of the petitioner herein and directed

respondent No.1 herein to restore the conjugal rights within a period of two months from date of order. The said order came to be passed on 12.01.2018. However, the petitioner remained with her parents and not bothered to comply the decree. Respondent No.1 neither challenged the said decree nor complied it, therefore, the said decree attained finality. Hence, respondent No.1 is not entitled for any relief as sought for. Making such submission, the learned counsel for the petitioner prays to allow the petition.

9. Per contra, respondent No.1 vehemently justified the order passed by the Appellate Court and submitted that it is an admitted fact that the petitioner and respondent No.1 are the husband and wife and they lived with the same relationship for more than three years. When she was staying in her matrimonial home, she was being harassed both physically and mentally and she was being forced to bring additional dowry from her parents and she was not being provided with basic necessities in the matrimonial home. Being frustrated by the act of the petitioner and respondent Nos.2 and 3, the respondent No.1 had to leave the house and forced her to live with her parents house. In the meantime, the petitioner herein with deliberate intention filed a petition for Restitution of Conjugal Rights and obtained decree with malafide intention to avoid further complications and also to avoid reunion of the respondent No.1.

10. It is further submitted that maintenance can be ordered even to the divorced wife. Such being the fact, when respondent No.1 proved the domestic violence is entitled for relief as ordered by the Appellate Court. The order passed by the Appellate Court contains no infirmity and interference with the said order is not required. Having submitted thus, the learned counsel for the respondent No.1 prays to dismiss the petition.

11. After having heard the learned counsel for the respective parties and also perused the findings of the Appellate Court, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of LALITA TOPPO v. STATE OF JHARKHAND AND ANOTHER¹, wherein the Hon'ble Supreme Court in paragraph Nos.1, 2 and 3 laid down the guidelines regarding economic abuse which reads thus:

"1. The appellant before us would have an efficacious remedy to seek maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "DVC Act, 2005") even assuming that she is not the legally wedded wife and, therefore, not entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973. This is because of the provisions contained in Section (2019) 13 SCC 796 3(a) of the DVC Act, 2005 which defines the term "domestic violence" in the following terms:

"3. Definition of domestic violence.-- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing

physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or"

2. What would be significant to note is that economic abuse also constitutes domestic violence and economic abuse has been defined by Explanation I(iv) to Section 3 of the DVC Act, 2005 to mean:

"(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the

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domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household."

3. In fact, under the provisions of the DVC Act, 2005 the victim i.e. estranged wife or live-in partner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also."

12. On careful reading of the judgment of the Hon'ble Supreme Court, it makes it clear that under the DV Act, 2005 the victim i.e., estranged wife or live-in-partner would be entitled to more relief than as contemplated under Section 125 of the Code of Criminal Procedure namely, to a shared house hold also.

"125. Order for maintenance of wives, children and parents. -- (1) If any person having sufficient means neglects or refuses to maintain--

(a) his wife, unable to maintain herself, or

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(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate[* * *], as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the

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same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.] (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for

levying fines, and may sentence such person, for the whole or any part of each months 4[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

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Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wifes refusal to live with him.

(4) No wife shall be entitled to receive an 5[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

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13. On reading of the above dictum of the Hon'ble Supreme Court, it is no doubt that under the D.V. Act even an estranged wife or the person who is living together are also entitled for maintenance or relief provided under the Act. However, in the present case, respondent No.1 deliberately even after the order of Restitution of Conjugal Rights, has not complied the order. Be that as it may, once she has established that she is the wife of the petitioner, she is entitled for maintenance under the D.V. Act. Therefore, I am of the considered opinion that the order passed by the Appellate Court in granting maintenance appears to be appropriate and there is no ground made out to interfere with the said order.

14. Accordingly, I proceed to pass the following:

ORDER The Criminal Revision Petition is dismissed.

Sd/-

JUDGE UN

Mr Sheeraz Ahmed Shariff vs The Regional Passport Officer on 16 February, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:6660
WP No. 24157 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 24157 OF 2023 (GM-PASS)

BETWEEN:

MR.SHEERAZ AHMED SHARIFF
S/O FIAZ AHMED SHARIFF
AGED ABOUT 33 YEARS,
R/AT NO. 3305, H.N.PURA
SHARIFF COLONY
HASSAN - 573 201.

...PETITIONER

(BY SRI MANOJ KUMAR N., ADVOCATE)

AND:

THE REGIONAL PASSPORT OFFICER
OFFICE AT 80FT ROAD, 8TH BLOCK,
Digitally signed KORAMANGALA
by NAGAVENI
BENGALURU - 560 095.
Location: HIGH
COURT OF
KARNATAKA
REPRESENTED BY
REGIONAL PASSPORT OFFICER.

...RESPONDENT

(BY SRI H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE SURRENDER CERTIFICATE VIDE REF PASSPORT

NO.V8354602 DTD 05.10.2023 ISSUED BY THE RESPONDENT
VIDE ANNEXURE-A; DIRECT THE RESPONDENT TO RETURN
THE VALID PASSPORT VIDE PASSPORT NO.V8354602 OF THE
PETITIONER TO THE PETITIONER.

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NC: 2024:KHC:6660
WP No. 24157 of 2023

THIS WRIT PETITION, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order directing surrendering of the passport of the petitioner, dated 05.10.2023.

2. Heard Sri Manoj Kumar N., learned counsel for petitioner and Sri H. Shanthi Bhushan H., learned Deputy Solicitor General of India for the respondent.

3. Facts in brief germane, are as follows:

The petitioner is the holder of an Indian passport, for it having been issued on 07.04.2011, for a period of ten years.

This was a normal validity passport. It was to expire on 06.04.2021. The petitioner secures a job in Qatar on 26.06.2016 and moves to Qatar. On 24.12.2018, the petitioner gets married to one Rukshar Mustafa. It transpires that the marriage between the two flounders. In the interregnum, the passport of the petitioner was said to expire, the petitioner had applied for re-issuance of the passport. The passport was reissued to the petitioner on 19.04.2021.

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4. The wife of the petitioner registers a complaint before the jurisdictional police against the petitioner and his family members for the offence punishable under Section 498A, 323, 504, 506 and 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The crime is registered on 07.09.2021.

The petitioner is granted anticipatory bail in the said case. The wife then prefers a case before the concerned Court invoking the provisions of the Protection of Women from Domestic Violence Act 2005 in Crl.Misc.No.120/2021. The police in the meantime, conduct investigation in Crime No.94/2021 and file their charge sheet for the aforesaid offences.

5. The wife then prefers a writ petition in W.P.No.3191/2023, seeking a direction to the respondent -

Regional Passport Officer to impound the passport of the husband on account of the pendency of the charge sheet. This Court disposes the writ petition on 01.03.2023, directing proceedings to be taken strictly in consonance with law, by the following order:

"2. The petitioner is the wife of the 2nd respondent. Several judicial proceedings are pending in the complaint so registered by the wife against the husband. The NC: 2024:KHC:6660 husband is at present residing in Doha, Qatar. The petitioner has knocked at the doors of this Court seeking the aforesaid directions for the 1st respondent-Regional Passport Officer to act in terms of The Passports Act, 1967 (hereinafter referred to as 'the Act', for short) and impound the passport of the 2nd respondent.

3. Sri.Shanthi Bhushan H., learned DSGI has filed statement of objections and has contended that the passport which had expired has been renewed by the Indian Embassy at Doha on the ground that the criminal verification status at Doha was cleared. It is for the petitioner now to approach the 1st respondent-Regional Passport Officer and place all such materials on record for the Regional Passport Officer to take action in terms of Section 10 of the Act. Paragraph Nos. 6 to 9 of the statement of objections read as follows;

"6. It is submitted that the passport Z2228256 issued by this respondent was cancelled and the 2nd respondent has got his passport reissued by the Embassy of India in Qatar vide passport No V8354602 dated 19/04/2021 valid till 18/04/2031. [Annexure R3] Subsequently a Police Clearance Certificate was also issued by the Embassy of India, Doha on receipt of a clear police verification report from his permanent address as mentioned in the application [Annexure R4 & R5]

7. As per the Passport Manual, a certified copy of the summons or warrant or order issued by the court and sufficient documentary evidence before initiating action of Impounding/ Revocation has to be furnished.

8. The petitioner has not enclosed photocopy of the Warrant of Arrest along with her representation, if at all the petitioner furnishes the required documents the same shall be forwarded to the embassy for the necessary action.

9. The petitioner may submit all the supporting certified copies of the document or Complaints so as the same can be forwarded to Embassy NC: 2024:KHC:6660 of India Doha for suitable and necessary action at their end."

4. In the light of the said objections where the Union of India accepts that it would consider the case of the petitioner for initiating action or impounding/revocation of the passport only after certified copies of all the documents are placed at its hand.

5. Learned Counsel for the petitioner would submit that if reasonable time is granted, the petitioner would place all the documents before the Regional Passport Officer for them to take appropriate action.

6. In the light of the aforesaid submissions, I deem it appropriate to dispose of the petition, directing the petitioner to place all the necessary materials i.e., certified copies of the pending proceedings before the 1st respondent within two weeks from the date of receipt of a copy of the order, and if so placed, the 1st respondent shall take action strictly in accordance with law i.e., The Passports Act, 1967, and pass appropriate orders in accordance with law."

Pursuant to the afore-quoted order, the wife represents before the Regional Passport Officer, who issues a communication to the petitioner through the Consulate General of India, Dubai, seeking his attendance and later, issues certain communication directing the petitioner to surrender the passport. The impugned surrender certificate reads as under:

"Surrender Certificate It is certified that passport with booklet number V8354602 issued to Mr. Sheeraz Ahmed Shariff, has been surrendered on 05/10/2023 at Passport Office "RPO NC: 2024:KHC:6660 Bengaluru" by the applicant. The official reason recorded for Surrender of the Passport is "obtained PCC by suppressing cases pending against him."

The Surrendered passport is kept in the custody of the aforementioned passport office vide number S/BNG/2427/23."

The reason behind the direction to surrender the passport is admittedly on the ground that the petitioner has not disclosed the pendency of the crime at the time of submission of the application seeking re-issuance of the passport. The dates are unequivocal. The passport is reissued in favour of the petitioner for a period of ten years from 19.04.2021 to 18.04.2031. The crime is registered against the petitioner in crime No.94/2021 on 07.09.2021, three months after the issuance of the passport. Therefore, there was no occasion for the petitioner to divulge any pending criminal case against him, as there was no case pending against him on the date on which the passport was reissued. The crime is registered on 07.09.2021, the charge sheet is filed against the petitioner and his family members on 26.11.2021. Therefore, from then till today, the petitioner is facing criminal trial in C.C.No.33610/2021. The concerned Court has taken cognizance of the offences after filing of the charge sheet on NC: 2024:KHC:6660 26.11.2021, on the said date itself and has issued summons to the accused.

6. Though the reason rendered by respondent No.1 to surrender the passport is on the face of it erroneous, the travel of the petitioner beyond the shores of the nation is to be regulated in terms of the circular in Circular No.GSR570(E) dated 25.08.1993. The normal validity passport cannot be operated by the petitioner and what can be issued to the petitioner is a short validity passport as and when the travel would be required after the petitioner appears and secures permission from the hands of the concerned Court.

7. The subject issue need not detain this Court and delve deep into the matter. In an identical circumstance, this Court in the case of SANTHOSH BEEJADI SRINIVASA VS. UNION OF INDIA IN W.P.NO.24269/2023 DISPOSED ON 04.12.2023, has held as follows:

"8. To consider the aforesaid issue, it would become necessary to notice certain provisions of the Passports Act, 1967 (hereinafter referred to as 'the Act' for short). The relevant provisions that are germane to be noticed are Sections 2(e), 3, 5, 6, 7, 10 and 22 of the Act and they read as follows:

"2. Definitions.--In this Act, unless the context otherwise requires,--

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...

(e) "travel document" means a travel

document issued or deemed to have been issued under this Act.

3. Passport or travel document for departure from India.--No person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid passport or travel document.

Explanation.--For the purposes of this section,--

(a) "passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;

(b) "travel document" includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

....

5. Applications for passports, travel documents, etc., and orders thereon.--(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper,

printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

Explanation.--In this section, 'named foreign country' means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1-A) An application for the issue of--

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(i) a passport under this Act for visiting a named foreign country; or

(ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1-B) Every application under this section shall be in such form and contain such particulars as may be prescribed.] (2) On receipt of an application [under this section], the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,--

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India,

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NC: 2024:KHC:6660 friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

6. Refusal of passports, travel documents, etc.--(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause

(c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

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(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

7. Duration of passports and travel documents.--A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period--

(a) if the person by whom it is required so desires; or

(b) if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

...

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10. Variation, impounding and revocation of passports and travel documents.--(1) The passport authority may, having regard to the provisions of sub-section (1) of Section 6 or any notification under Section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,--

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any

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NC: 2024:KHC:6660 offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub- section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause

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NC: 2024:KHC:6660 to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

....

22. Power to exempt.--Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,--

(a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions."

(Emphasis supplied) Section 2(e) defines a 'travel document' which has been issued or deemed to have been issued under the Act. Therefore, the passport becomes a travel document for

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NC: 2024:KHC:6660 departure from India and return. Section 3 depicts what a passport would be. Section 5 deals with application for passport and the manner in which the application should be made before the Passport Authorities. Section 6 forms the fulcrum of the lis. Section 6(1) directs that subject to other provisions of the Act the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or (c) of sub-section (2) of Section 5 on several grounds stipulated therein. The grounds are clauses (a) to (d) of sub-section (1) and clauses (a) to (i) of sub-section (2) of Section 6. Section 7 deals with duration of passport and travel documents. A passport or a travel document unless revoked continues to be in force for such period as may be prescribed in the said travel document of each class of passport. Section 10 deals with variation, impounding and revocation of passport and travel documents. Section 22 empowers the Central Government to exempt any person or class of persons from operation of all or any of the provisions of the Act by issuance of a notification.

9. In furtherance of Section 22, Government of India in the Ministry of External Affairs, has issued a notification on 25-08-1993 in G.S.R.570(E) (for short 'GSR 570 Notification'). GSR 570 notification deals with a situation of the kind that is projected in the case at hand. Therefore, I deem it appropriate to notice the notification insofar as it is germane. It reads as follows:

"The Notification dated 25.08.1993 reads as under:

"MINISTRY OF EXTERNAL AFFAIRS NOTIFICATION New Delhi, the 25th August, 1993 G.S.R. 570(E).-In exercise of the powers conferred by clause (a) of Section 22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No. G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of

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NC: 2024:KHC:6660 Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:--

(a) the passport to be issued to every such citizen shall be issued--

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;

(iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the court; and provided further that, in the meantime, the order of the court is not cancelled or modified;

(c) any passport issued in terms of (a) (i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

(Emphasis supplied) GSR 570 deals with a situation of the kind in the case at hand. It permits issuance of short validity passport pursuant to the orders that would be passed by the

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NC: 2024:KHC:6660 concerned Court according to the specified period and if no period is specified, the passport would be issued for a period of one year. Therefore, it is for the applicant against whom criminal case is pending, in any Court of law in the country, to approach the concerned Court before which the proceeding is pending, and seek for permission to travel; if such permission is granted, it will have to be in tune with the conditions in GSR 570 (supra).

10. Section 24 of the Act empowers the Central Government to make Rules for carrying out the purposes of the Act. Rules are promulgated in the year 1980 i.e., the passports Rules, 1980 (hereinafter referred to as 'the Rules' for short). Rule 5 deals with form of applications for issue of passport, renewal or re-issuance thereof. The form is found in Schedule-III.

11. The aforementioned form is the broad statutory framework for issuance, re-issuance, variation, cancellation, impounding of passport as also, the form in which the application for issuance or re-issuance is to be made.

APPLICABILITY OF THE ACT TO THE SUBJECT FACTS:

12. The petitioner is issued passport on 11-04-2014. Its validity is up to 10-04-2024. In the interregnum, the petitioner gets embroiled in a crime. The substance of the crime is mother of the petitioner commits suicide. Initially an unnatural death report was prepared by the Police but later when the investigation was directed to be taken up, the petitioner, his father and his wife were all arrayed as accused 1, 2 and 3. The offences were the ones punishable under Sections 302, 201, 120-B, 182 r/w 34 of the IPC. The case was committed to the Court of Sessions and presently pending trial in S.C.No.28 of 2017. Therefore, it is a case where the petitioner is one of the accused in an offence which can even result in capital punishment. The trial is in progress. The petitioner is not absolved of the crime, by any competent Court of law even to this date. It is an altogether different circumstance that the petitioner has been permitted to travel, by the Court of Sessions, intermittently for his work. That is not the issue in the case at hand. The issue is validity of the passport of the

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NC: 2024:KHC:6660 petitioner or the passport having less than six months to expire which makes the petitioner ineligible for issuance of visa and travel. Therefore, it is germane to notice whether such ineligibility has a statutory foundation. It therefore becomes germane to notice the acknowledgment of denial issued by the 2nd respondent. It reads as follows:

"Acknowledgement Letter REISSUE PASSPORT-Normal File No.:BN2075801459323
SANTHOSH BEEJADI SRINIVASA Application Status * Service Completion zone Fee
Receipt/Reference No. Penalty Receipt No. On Hold GO (Granting) CPADBFRJW1
NA Police Verification Mode** Passport Validity Cancelled Passport No. ECR Status
NA NA NA NA Documents Submitted Documents Requiring Re- Documents Verified
with successfully submission/ Additional originals, however,

1. Aadhar Card (Address Proof) Document(s) Required confirmation from issuing

2. Scanned Application Form Yes authority is required

3. Old passport

4.ac-f ppt-decl On Hold Remarks By Granting Officer: case still pending, await for court order for SVP/Permission from Court.

Next Appointment Date and Time:27/09/2023, 12:00PM Reporting Time:11:45 AM"

The remark is that the case is still pending, await court order for issuance of short validity passport/await permission from the Court.

13. Section 6 deals with grounds for refusal of passport. Sub-section (2) (e) and (f) of Section 6 quoted supra deal with the present situation. If the applicant at any time during the period of five years immediately preceding the date of application has been convicted for any offence involving moral turpitude and sentenced thereof to imprisonment for not less than 2 years, passport cannot be issued or re-issued. It is not the situation in the case at hand. Clause (f) mandates that where proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India, the passport authority is empowered to deny issue of travel document as obtaining in clause (c) of Sub-section (2) of Section (5) of the Act. It is an admitted fact that proceedings against the petitioner are pending trial in S.C.No.28 of 2017

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NC: 2024:KHC:6660 before the learned Sessions Judge for the afore-quoted offences. Denial of re-issuance of passport is thus in consonance with law.

14. The petitioner has relied on several judgments of co-ordinate Benches of this Court to contend that the issue stands answered and pendency of criminal case should not come in the way of re-issuance or renewal of passport; it can at best be at the time of issuance of passport, at the first instance. The co-ordinate Bench in the case of KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA (supra) though considers Section 6(2)(f), observes that the provision would be applicable only to issuance of a fresh passport and not for renewal or re-issuance. For such observation, the co-ordinate Bench follows the judgment rendered by the High Court of Delhi in the case of ASHOK KHANNA. The Delhi High Court in the case of ASHOK KHANNA v. CENTRAL BUREAU OF INVESTIGATION¹ has held as follows:

"14. In the case of Ashok Kumar Sharma (Supra), the case before this court was for re-issuance of the passport wherein case in hand is for renewal of the passport.

15. As per Chapter I Schedule III of the Passport Rules, 1980, passport application Form-I EA(P)-2 is for miscellaneous services of Indian passport for (use in India) (A) Renewal (B) Additional Visa Sheet, (C) Additional Booklet, (D) Change of Address, (E) PCC, (F) Additional Endorsement, (G) Chief Inclusion/deletion (H) Any other service (specify), therefore, the case of the petitioner does not come under Form EA(P)-1 for new/re-

issue/replacement of lost/damaged passport.

16. The case of the petitioner is for renewal of the passport. Neither he is asking for a new passport nor seeking re-issue or replacement of lost or damaged passport, therefore, the said applicant is not applicable in the case of the petitioner.

17. However, the case of the petitioner falls under application Form EA(P)-2 and according to this application, I note in Form EA(P)-1, passport application form (1) serial no. 17 (a),

(b) & (c) are as under:

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NC: 2024:KHC:6660 "17(a) Have you at any time during the period of five years immediately preceding the date of this application been convicted by a court in India for any criminal offence and sentenced to imprisonment for two years or more? If so, give name of the court, case number and relevant sections of Law. (Attach copy of judgment)

(b) Are any criminal proceedings pending against you before a court in India? If so, give name of court, case number and relevant sections of Law.

.....

(c) If answer at (b) is (Y)es, please furnish No Objection Certificate from competent court for grant of Passport.

.....

(d) Have you been ever refused/denied passport? If yes, give details:

.....

(e) Has your passport ever been impounded/revoked? If yes, give details:

.....

(f) Have you ever applied/granted political asylum by any foreign country? If yes, give details:

....."

18. Whereas in Form EA(P)-2, serial number 5 is application which is reproduced as under:

"5. Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3)."

19. Thus, in EA(P)-2, there is no such condition to take certificate from the court. Thus, the respondent has misread the provisions and contents of the two applications mentioned above.

20. Moreover, Rule 5 is applicable for renewal of passport which is as under:

"5. Form of applications.-[(1)] An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set

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NC: 2024:KHC:6660 out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form:

[Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by-

(a) the Central Government; or

(b) Any other person whom the Central Government may notification to the condition that such complies that Government behalf:

Provided further that] in the course of any inquiry under sub- section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application. 4[(2) The price of the new application forms referred to in sub- rule (1) shall be as specified in column 3 or 4, as the case may be, of Schedule III A for that particular category:

[***] [(3) The Passport Authority may authorise any person or authority to collect passport applications on its behalf for issue of a passport or travel document or for the renewal thereof or for any miscellaneous service on payment of a service charge specified by the Central Government under sub-rule (2) of rule 8 in addition to the fee payable under sub-rule (1) of rule 8 and the service charge shall be paid by the applicant to such person or authority.]

21. In view of above provisions, there is a separate provision for renewal of the passport, therefore, section 6 is not applicable in the present case.

22. Though Passport Authority is not made party in the present appeal, I exercise powers under Article 226 of the Constitution of India, accordingly, the said authority is directed to renew the passport of the petitioner within 15 days from the receipt of this order."

(Emphasis supplied) The subsequent judgment by another co-ordinate Bench in SANJAY G.KHENY (supra) relies on the afore-quoted judgment of other co-ordinate Bench in the case of KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA and allows the petition holding that it can at best be for

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NC: 2024:KHC:6660 issuance of passport and cannot be for re-issuance or renewal of passport.

15. The judgment of the High Court of Delhi upon which both the judgments of coordinate Benches placed reliance upon was tossed before the Apex Court. The Apex Court in terms of its order dated 02-05-2022 restricted the question of law only to the said case. The Apex Court has, in the case of CENTRAL BUREAU OF INVESTIGATION v. ASHOK KHANNA² held as follows:

"1. Delay condoned.

2. In the facts and circumstances of the present case and without expressing any opinion on the question of law sought to be raised in these proceedings, we are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution. We may also clarify that the order the High Court will be restricted only to the facts and circumstances of the present case and shall have application only to the case of the respondent.

3. The Special Leave Petitions are disposed of, subject to the above clarification.

4. Pending application, if any, stands disposed of."

(Emphasis supplied) The Apex Court, did not express any opinion on the question of law. Question of law, I mean would be whether an applicant against whom criminal case is pending seeks renewal/reissuance of passport, can be denied or otherwise, but restricted the law laid down by High Court of Delhi only to the facts and circumstances of the case of ASHOK KHANNA and will have application only to the case before the Apex Court. The Special Leave Petitions were disposed with the said clarification.

16. Therefore, the trail of judgments would go this way. The High Court of Delhi holds in the case of ASHOK KHANNA, that pendency of a criminal case will not come in the way of re-issuance of passport; this is followed in KRISHNA CHIRANJEEVI RAO PALUKURI VENKATA's SLP (Criminal) Diary No.6142 of 2022 decided on 02-05-2022

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NC: 2024:KHC:6660 case; the said judgment is followed in SANJAY G.KHENY's case. Therefore the foundation, inter alia, to render the finding by both the co-ordinate Benches of this Court, was the judgments rendered by the High Court of Delhi. In the light of the Apex Court restricting the findings only to the said respondent, the law declared by the co-ordinate Benches of this Court

cannot mean that they have become final and would be binding on this Court to follow.

17. Reference being made to the judgment of the High Court of Andhra Pradesh in the case of KADAR VALLI SHAIK v. UNION OF INDIA³ becomes apposite, the Andhra Pradesh High Court considers the entire spectrum of the Act and orders passed by co-ordinate Benches of this Court and holds that Section 6(2)(f) would prevail. The summing up by the Andhra Pradesh High Court is as follows:

"103. To sum up, this Court holds that;

(i) 'Issue' of passport in Section 5 of the Passports Act includes 'renewal' of the passport as well;

(ii) While considering the renewal of the passport, the passport authority would be within its jurisdiction and authority to refuse renewal, on the same grounds as in the cases of issuance of the passport for 'the first time', provided by Section 6 (2) of the Passport Act. In other words, Section 6 (2) of the Passport Act applies to renewal of the passport, as well;

(iii) In the cases for renewal, to which Section 6 (2) (f) of the Passports Act is attracted, i.e., where the applicant is facing criminal trial in a criminal Court in India, renewal of the passport shall be refused, subject to the fulfillment of the condition under the notification of the Central Government, dated 25.08.1993, issued in exercise of the powers conferred by Section 22 of the Passports Act, upon which such applicant shall stand exempted from the operation of the provisions of Clause

(f) of sub-section (2) of Section 6;

(iv) In a case where clause (f) of Section 6 (2) is attracted, the holder of the passport, for its renewal, will have to produce an order from the Court concerned, where the proceedings against him are pending trial in 2023 SCC OnLine AP 406

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NC: 2024:KHC:6660 respect of an offence alleged to have been committed by him, permitting him to depart from India;

(v) The notification dated 25.08.1993 applies to the citizen applicants for renewal of the passport even if already departed from India under the passport of which renewal is sought.

(vi) On production of an order, from the concerned Court, as referred in the notification, the renewal of the passport shall not be refused only on the ground of Section 6 (2) (f), i.e., mere pendency of the criminal case for trial;

(vii) Condition (d) of the notification dated 25.08.1993 is an additional requirement and is not in substitution of the requirement from those citizen/applicants who have to produce an order of the Court concerned, where the criminal case is pending, permitting him to depart from India.

(Emphasis supplied) The Andhra Pradesh High Court holds that while considering renewal or re-issuance of passport, the authority would be within its jurisdiction to refuse renewal on the same grounds as in cases of issuance of passport for the first time provided in Section 6(2)(f) of the Act.

18. The unmistakable inference that can be drawn is that, there is no difference between renewal, re-issuance or first issuance of the passport under Section 6(2) of the Act. Every issuance, re-issuance or renewal will have to meet the requirements or pass through the rigours of Section 6. To consider the submission or contra submission, hypothetically as an illustration, at the time of issuance of passport to an applicant, the applicant is clean and no proceedings are pending against him. In the interregnum during the validity of the passport the applicant gets embroiled in a crime; trial is pending or gets convicted for an offence, it cannot be said that those facts have to be ignored and passport should be directed to be re-issued only on the score that, it is for renewal and no rigour for issuance of a fresh passport can be insisted upon. This would sometimes result in the accused, holder of a passport, fleeing justice and frustrating trial. It may not be in all circumstances, but

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NC: 2024:KHC:6660 it is open to such circumstance. It is, therefore, the rigour under Section 6(2)(f) of the Act will have to be given credence as mandated under the statute failing which, it would render section 6(2)(f) of the Act redundant or otiose.

19. This Bench in the case of KAJAL NARESH KUMAR (supra) has held as follows:

"8. The afore-narrated facts are not in dispute. The petitioner was in possession of a passport which had expired at the relevant point in time. The petitioner seeks re-issuance of his passport on its expiry. On the basis of the documents submitted, the respondent-Regional Passport Officer reissues the passport in favour of the petitioner. Later when the police verification is done as a routine in every case, it comes to the knowledge of the respondents that the petitioner is involved in a criminal case in Crime No.16 of 2021. Noticing the fact that the petitioner had suppressed the factum of pendency of a criminal case against him and had secured the passport by misrepresentation, issued a notice directing him to surrenders the passport. The involvement of the petitioner as an accused in Crime No.16 of 2021 is not in dispute. 'B' report is yet to be considered by the learned Magistrate. Therefore, the 'B' report being filed will not absolve the petitioner of the crime. Section 6 of the Act reads as follows:

"6. Refusal of passports, travel documents, etc.-- (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any

one or more of the following grounds, and on no other ground, namely:--

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
- (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
- (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

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NC: 2024:KHC:6660 (2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

- (a) that the applicant is not a citizen of India;
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

(Emphasis supplied) Section 6 deals with refusal of passport and travel documents etc. Section 6(2)(f) mandates that if proceedings are pending in respect of an offence alleged to have been committed by the applicant before a criminal Court in India, the passport authority would have the right to refuse issue of passport or travel documents for visiting any foreign country.

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NC: 2024:KHC:6660 Therefore, issuance of passport or re-issuance of passport is subject to Section 6(2)(f) of the Act.

9. It is an admitted fact in the case at hand that a crime in Crime No.16 of 2021 is pending against the petitioner. The Police having filed a 'B' report in the matter would not mean that proceedings against the petitioner have culminated in her acquittal. The rigour of Section 6(2)(f) of the Act gets evaporated only when the applicant who is facing criminal proceedings or a FIR is acquitted, discharged or the proceeding against the said applicant is quashed by a competent Court of law, in exercise of its powers under Section 482 of the Cr.P.C. None of these circumstances exist in the case at hand. All that has happened is, the Police have filed a 'B' report. Mere filing of 'B' report would not mean that the petitioner becomes allegation free qua Section 6(2)(f) of the Act.

(Emphasis supplied)

20. On a coalesce of the provisions of the Act, the Rules, the judgments rendered by the co-ordinate Benches, its restriction by the Apex Court and the judgment rendered by this Bench, would all lead to an unmistakable conclusion that Section 6(2)(f) and GSR 570 Notification makes a person ineligible for issuance of passport. The issuance would include renewal or re-issuance. Separate yardstick is nowhere indicated in the Act or the Rules. The Rules cannot be rendered flexible to such circumstances by a stroke of pen or a fiat of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. As long as Section 6(2)(f) stares at any application, be it for fresh, renewal or re-issuance, such application cannot be directed to be granted diluting the rigor of Section 6(2)(f). The applicant is under a cloud, "if an applicant of the kind in the case at hand, wants to walk over the clouds; the cloud over such applicant must walk away."

Therefore, the petitioner, if he intends to travel shall only on the condition that are stipulated in the aforesaid order.

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NC: 2024:KHC:6660

8. For the aforesaid reasons, the following:

ORDER

- (i) The writ petition is allowed in part.
- (ii) The impugned surrender certificate dated 05.10.2023, stands quashed.
- (iii) Respondent is at liberty to initiate any proceeding in accordance with law.
- (iv) The petitioner on the strength of the passport cannot leave the shores of the nation unless he secures permission for such travel from the concerned Court where the criminal case in C.C.No.33610/2021 is pending consideration.
- (v) The petitioner shall approach the concerned Court seeking issuance of a short validity passport and the concerned Court shall consider such application strictly in consonance with the Act, GSR-570E and its requirements.
- (vi) The Court shall not reject the application/permission for issuance of a short validity passport on the ground of pendency of criminal case before it.
- (vii) The petitioner, at any time files an application before the concerned Court, shall clearly indicate the reason

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NC: 2024:KHC:6660 and the intended date of travel from the shores of this nation and his return to the shores of the nation.

Sd/-

JUDGE nvj

Sharath Chandrasekhar vs Union Of India on 14 February, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:6357
WP No. 18066 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2024
BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 18066 OF 2023 (GM-PASS)

R

BETWEEN:

SHARATH CHANDRASEKHAR
AGED ABOUT 42 YEARS,
S/O RACHAPPA CHANDRASHEKAR,
PERMANENT RESIDENT OF
FLAT NO. 204,
HM GLENVILLE APARTMENTS,
NO. 31/11, 15TH MAIN ROAD, 7TH CROSS,
VASANTH NAGAR,
BENGALURU - 560 052.

...PETITIONER

(BY SRI DHANANJAY JOSHI, SR.ADVOCATE FOR
Digitally signed SRI KASHYAP N. NAIK, ADVOCATE)
by NAGAVENI

Location: HIGH AND:

COURT OF

KARNATAKA

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
SOUTH BLOCK,
NEW DELHI - 110 001.

HAVING ITS REGIONAL OFFICE AT:
REGIONAL PASSPORT OFFICE,
BENGALURU, 80 FEET ROAD,

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KORAMANGALA, 8TH BLOCK,
BENGALURU - 560 095.

(BY SMT.PRIYANKA S.BHAT, CGC)

... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION TO THE RESPONDENT TO CONSIDER THE PETITIONER'S APPLICATION FOR RENEWAL OF HIS PASSPORT BEARING NO. K8020859 AND CONSEQUENTLY TO RENEW THE PETITIONER PASSPORT (BEARING NO. K8020859 (ANNX-B)).

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus, to consider the petitioner's application for renewal / re-issuance of his passport.

2. Heard Sri Dhananjay Joshi, learned senior counsel along with Sri Kashyap N.Naik, learned counsel for the petitioner and Smt. Priyanka S. Bhat, learned Central Government Counsel for the respondent.

3. Facts in brief, germane are as follows:

The petitioner claims to be a lawyer by profession, registered himself with the Bar Council of Karnataka. Petitioner also claims to have registered in New York State Bar of the NC: 2024:KHC:6357 United States. He is said to be holding a passport issued by the Regional Passport Office, Bengaluru, on 05.04.2013, which was valid till 04.04.2023. Six months prior to the expiry of the passport, the petitioner submits an application seeking renewal / re-issuance of passport.

4. In consideration of the application, a police verification process is undertaken for such re-issuance / renewal. It is averred that during the police verification, it is known that the petitioner is embroiled in three proceedings. One M.C.No.2679/2022 which was initiated at Bengaluru against his wife, is now transferred to Lucknow in terms of an order passed by the Apex Court; another proceeding in C.C.No.621/2022 filed by the wife against the petitioner seeking maintenance under Section 125 of the Cr.P.C. and the third proceeding is a proceeding instituted by the wife in Crl.Misc.No.2524/2022 under Section 12 of the Protection of Women From Domestic Violence Act, 2012. All proceedings are pending before the concerned jurisdictional Courts at Lucknow. At the time of police verification, the petitioner informs the police about all the aforesaid proceedings.

NC: 2024:KHC:6357

5. A fourth proceeding is a crime registered by the petitioner in Crime No.157/2022 against his wife invoking Sections 384, 380, 504, 506 and 34 of the IPC. The averment in the petition is that, as a counter blast, the wife also registers a crime in Crime No.164/2022 before the jurisdictional police at Lucknow for offences under Sections 498A, 323, 406, 504 and 506 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The petitioner has challenged the same before the High Court of Allahabad and the said challenge is pending consideration.

6. On 16.03.2023, the petitioner receives a letter from the Regional Passport Office informing the petitioner that they have received an adverse verification report from the police and seeks a written explanation. The petitioner replies to the notice enclosing all the documents as was sought for. No response comes about. Thereafter, the petitioner approaches the respondent and explains that his passport requires to be re- issued / renewed, no action is taken. It is therefore, the petitioner is before this Court in the subject petition.

NC: 2024:KHC:6357

7. The learned senior counsel would submit that the passport is not reissued / renewed by the respondent on the score that there are three cases pending against the petitioner. One, a case instituted by the wife under Section 125 of the Cr.P.C.; another case instituted by the wife invoking Section 12 of the Protection of Women From Domestic Violence Act, 2012 and a crime in Crime No.164/2022 for the offences under Sections 498A, 323, 406, 504 and 506 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Learned senior counsel would submit that the crime in Crime No.164/2022 has been stayed by the High Court of Allahabad, Lucknow Bench in Crl.Misc.Writ Petition No.9651/2022.

8. Learned Central Government Counsel representing the respondent - Union of India would refute the submissions to contend that there are three proceedings pending against the petitioner and therefore, the passport cannot be issued as is sought by the petitioner in the application. No fault can be found in the act of the respondent in not considering the application submitted for renewal of passport.

NC: 2024:KHC:6357

9. I have given my anxious consideration to the submissions made by the learned senior counsel for the petitioner and learned Central Government Counsel representing the respondent and have perused the material on record. In furtherance whereof, the only issue that falls for my consideration is, whether the re-issuance or the renewal of the passport can be denied on the score that a FIR is registered against the holder of the passport?

10. The afore-narrated facts are not in dispute and requires no reiteration. The issue lies in a narrow compass, with regard to the action of the respondent in not reissuing the passport as was sought by the petitioner. As observed, the petitioner is a holder of an Indian passport, which was issued to him

on 05.04.2013 and its validity was upto 04.04.2023. The petitioner, six months before its expiry i.e., on 10.11.2022, submitted an application seeking renewal of his passport. It is not considered on the score that there are three cases pending against the petitioner, which are noted hereinabove. The tenability or otherwise of such non-consideration is required to be noticed, for which certain provisions of the Passports Act, 1967 (for short 'the Act'), are necessary to be considered.

NC: 2024:KHC:6357 Section 6 of the Act deals with refusal of passports / travel documents, it reads as follows:

""6. Refusal of passports, travel documents, etc.--(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
- (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
- (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

- (a) that the applicant is not a citizen of India;
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

NC: 2024:KHC:6357

- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

(Emphasis supplied) It is the afore-quoted provision is what is necessary to be considered for the resolution of the issue in the lis. It NC: 2024:KHC:6357 mandates that a passport or a travel document can be denied to a holder of the passport, if any proceeding is pending, against him before any criminal court in India. The proceedings that are pending against the petitioner are as afore-quoted. Three proceedings against him and, one instituted by him.

11. In furtherance of the afore-quoted statutory provision, the Ministry of External Affairs had issued a notification in Notification No.GSR570(E) on 25.08.1993, as to what must be done in cases where there are pending cases before the criminal court, against the holder of a passport. This is further clarified by another Office Memorandum dated 10.10.2019, the relevant clause of which, reads as follows:

"(vi) In case where the secondary Police verification is also 'Adverse', it may be examined whether the details brought out in the police report match the undertaking submitted by the applicant. It may be noted that mere filing of FIRs and cases under investigation do not come under the purview of Section 6(2)(f) and that criminal proceedings would only be considered pending against an applicant if a case has been registered before any Court of law and the court has taken cognizance of the same."

(Emphasis supplied) The clarification is rendered by the Ministry of External Affairs that mere filing of FIR and cases under investigation

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NC: 2024:KHC:6357 would not come under the purview Section 6(2)(f) of the Act and the criminal proceedings would only be considered when pending, and the concerned Court has taken cognizance of the offence, which would presuppose that the charge sheet has been filed by the Officer in-charge

of a police station.

12. In the light of the aforesaid clarification, in cases where the proceedings are pending against the holders of the passports, when they seek renewal or re-issuance, it cannot be denied on the ground that the proceedings are pending against those holders of the passports only in cases, where the proceedings are at the stage of crime, and the concerned criminal Court has not taken cognizance of the offence. Any other proceeding pending invoking any other law, will not become an impediment for the Passport Authorities for issuance / re-issuance / renewal of passport. Therefore, it is expected of the Passport Authorities to act in accordance with the clarification as obtaining in the Office Memorandum dated 10.10.2019 and not deny re-issuance / renewal of passport to those passport holders against whom pending criminal cases are at the stage of investigation, and the concerned Court is not yet take cognizance, and not drive every passport holder to

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NC: 2024:KHC:6357 knock at the doors of this Court, for redressal of their grievance.

13. For the aforesaid reasons, the following:

ORDER a. The writ petition is allowed.

b. Mandamus issues to the respondent to consider the application submitted by the petitioner seeking renewal / re-issuance of the passport within an outer limit of two weeks from today or if not earlier. c. It is needless to observe that such consideration shall happen only in accordance with law. Ordered accordingly.

Sd/-

JUDGE NVJ

Ashraff Mohammed Bapu vs Shruthi @ Sajidha Ashraff Mohammed on 14 February, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

-1-

NC: 2024:KHC:6226
WP No. 6779 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 6779 OF 2023 (GM-RES)
BETWEEN:

1. ASHRAFF MOHAMMED BAPU
AGED 46 YEARS, S/O M N M BAPU
R/AT FLAT NO 102, ARCHANA ARCADE
POST KUNJIBETTU 576102
UDUPI TALUK AND DISTRICT

...PETITIONER

(BY SRI. S.K ACHARYA., ADVOCATE)

AND:

1. SHRUTHI @ SAJIDHA ASHRAFF MOHAMMED
AGED 44 YEARS
W/O ASHRAFF MOHAMMED
R/AT C/O GIRIJA SHETTIGAR
NEAR SONIA CLINIC
MANIPAL 576104

Digitally signed by

PADMAVATHI B K

UDUPI DISTRICT

Location: HIGH

...RESPONDENT

COURT OF

(BY SMT.HALEEMA AMEEN., ADVOCATE)

KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.CASE
NO.21/2022 ON THE FILE OF THE COURT OF THE ADDL. CIVIL
JUDGE AND JMFC UDUPI VIDE ANNEXURE A AND TO DECLARE
THE SAME AS NOT MAINTAINABLE UNDER LAW AND TO

DECLARE AS AGAINST THE MANDATE OF SECTION 12 OF

-2-

NC: 2024:KHC:6226
WP No. 6779 of 2023

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT
2005 AND ALSO ILLEGAL, ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court calling in question the entire proceedings in Crl. Misc. No.21/2022 registered by the respondent invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DV Act').
2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.
3. The petitioner is husband and the respondent is wife. The relationship between the husband and wife after the birth of two children appears to have floundered. On floundering of relationship, the parties were before the concerned Court. The pre-litigation process was initiated by the parties which ends up in a compromise in pre-

NC: 2024:KHC:6226 litigation Case No.11/2020 by drawing up the terms of compromise. The terms of compromise reads as follows -

"BEFORE THE PRE LITIGATION CENTRE UDUPI, Pre Litigation No:11/2020
BETWEEN:-

SAJIDHA ASHRAF) PETITIONER
AND
1. ASHRAF MOHAMMAD) RESPONDENTS
2. ADNAN ASHRAF MOHAMMED)

COMPROMISE APPLICATION FILED UNDER ORDER XXIII, RULE 3 OF THE
CODE OF CIVIL PROCEDURE 1908:

The parties above named beg to submit as follows:

That the dispute between parties in the above case is resolved in the pre litigation conducted by the District Legal Service Authority in the presence of the well wishes of

both the parties.

The terms of compromise arrived between the parties is as under:

1. That the respondent No.1 is having only the life interest and respondent No.2 is having 1/2 right share and accordingly the said respondents have agreed to release their NC: 2024:KHC:6226 respective right in the land covered by S.No:272/40 (Old S.No.272/9A1) measuring about 0.10.00 acres situated in Shivalli village of Udupi Taluk and District in favour of the petitioner who is also having 1/2 right in the same.
2. That the respondent no.1 has also agreed to pay Rs.50,000/- to the petitioner by way of maintenance within 15 days from this date. On receipt of the said amount the petitioner has no more right to claim the maintenance in future.

However in case of default to be committed by the 1st respondent to pay the said 50,000/- amount the petitioner is to recover the same through the process of court.

4. That the respondent No.1 and his son shall execute release deed or any type of deed in favour of petitioner by complying with the legal requirements connected to the registration. In case of default to comply with the said requirements the petitioner is also entitled to take execution of the decree to be passed on this application.
5. That petitioner and 1st respondent have agreed to dissolve their marriage by a decree of divorce by mutual consent.

NC: 2024:KHC:6226

6. That the petitioner has undertaken to withdraw the criminal case filed by her against the 1st respondent and another in Crime No:47/2019 (Women P.S.).
7. That the petitioner and 1st respondent are withdrawing their allegations made against each other.
8. That the petitioner and 1st respondent have no claim whatsoever against each other in future also subject to the compliance of condition Nos.1 and 2 herein also.
9. It is therefore prayed that the court may be pleased to pass necessary decree and Judgment in terms of this compromise and this application shall form the part of the decree.
10. That the parties shall bear their respective costs of the case.

UDUPI Date:11.03.2020 Sd/-

PETITIONER

Sd/-

Sd/-

ST 1	RESPONDENT	ND 2	RESPONDENT"
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4. The compromise was entered into between the parties on 11.03.2020. The learned counsel for the petitioner submits that the terms of compromise were all NC: 2024:KHC:6226 complied. The wife after about two years i.e., on 28.03.2022 files a Memo before the District Legal Services Authority that she is not agreeable for the compromise and wanted to withdraw all the terms of the compromise. The proceedings take place before the Authority and the Memo is closed on 08.04.2022 as it was arising out of a compromise made between the parties on 11.03.2020. The respondent - wife then initiates the proceedings invoking the provisions of the DV Act, in which an order is passed, on an application filed by the wife. The order reads as follows -

"ORDER ON I.A. NO.I The petitioner has filed this application U/sec 23 of D.V. Act claiming interim maintenance allowance of Rs.25,000/- p.m. to petitioner from the respondent No.1. The petitioner has filed affidavit with the application and stated that the respondent is Business Man and earning salary of Rs.65,000/- per month.

After hearing submission of petitioner counsel, and perusal of the record and NC: 2024:KHC:6226 considering the status of the petitioner this Court is of the considered opinion that to meet the day today expenses and needs the petitioner shall be granted the interim maintenance at this stage. Hence, I proceed to pass the following:

ORDER The petitioner is entitled to interim maintenance of Rs.8,000/- p.m. from the respondent No.1. The said amount shall be paid on or before 5th of every month till disposal of I.A. No.I. Office to issue notice to CDPO to submit DIR report and issue notice to respondents through CDPO.

Await DIR report by:
12.10.2022. "

5. The order directs that the application under Section 23 of the DV Act claiming interim maintenance is filed by the wife and in the light of the affidavit, so filed the husband is earning a salary of Rs.65,000/-. Therefore, interim maintenance is granted under the DV Act.

NC: 2024:KHC:6226

6. The learned counsel for the petitioner submits that none of the proceedings that has taken place prior to the filing of the petition invoking the provisions of the DV Act have been pleaded in the application filed by the wife before the concerned Court and an order of maintenance is granted.

7. The order of maintenance, on the face of it, is perfunctory as there are no reasons indicated as to why the maintenance is to be granted to the wife or the capacity of the petitioner to pay such maintenance. The concerned Court ought to have noticed the facts in which it has directed the maintenance to be paid though it is interim. Therefore, the order does not inspire even a semblance of confidence for this Court to affirm the grant of maintenance at Rs.8,000/- . Though the learned counsel for the petitioner has challenged the entire proceedings initiated under the DV Act, it is for the Court to consider the issue on its merit. This Court would find NC: 2024:KHC:6226 fault only on the order on I.A. No.I directing maintenance at Rs.8,000/- per month to be paid.

8. The concerned Court shall now consider the pleadings of the wife and the objections of the husband, if any, that would be filed before the Court and then pass appropriate orders in accordance with law.

9. For the aforesaid reasons, the following -

ORDER i. Writ Petition is partly allowed. ii. The proceedings before the concerned Court under the DV Act are not interfered with, only the order of maintenance granting Rs.8,000/- per month to the wife for it being bereft of reasons is set aside. iii. The concerned Court shall hear the parties on the application for interim maintenance

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NC: 2024:KHC:6226 and pass appropriate orders, in accordance with law.

Sd/-

JUDGE HNM

Smt Chaithanya S vs Sri M Vinay Rao Jadhav on 14 February, 2024

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NC: 2024:KHC:6342
CP No. 485 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE C.M. POONACHA
CIVIL PETITION NO. 485 OF 2023

BETWEEN:

1. SMT CHAITANYA S
AGED ABOUT 25 YEARS
W/O SRI M VINAY RAO JADHAV
RA/T DOOR NO 4984
7TH CROSS, 7TH MAIN
2ND STAGE, VIJAYANAGAR
MYSORE 570017

...PETITIONER

(BY SRI. ESHWARA H H., ADVOCATE)

AND:

1. SRI M VINAY RAO JADHAV
AGED ABOUT 31 YEARS
S/O LATE SRI MANJUNATH RAO
RAILWAY RESERVATION SUPERVISOR
R/AT NO.18, HIRIYANGALA ROAD
BALLARY CAMP, BIRUR CAMP

Digitally signed by
BHARATHI S
Location: HIGH COURT OF KARNATAKA
BY SRI. G MAHANTESH., ADVOCATE) . . . RESPONDENT

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF CPC,
PRAYING TO ISSUE DIRECTIONS TO TRANSFER THE M.C. NO.
52/2023 PENDING ON THE FILE OF THE COURT OF SENIOR CIVIL
JUDGE AT KADUR TO THE HONBLE PRL. JUDGE, FAMILY COURT,
MYSORE IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The present petition is filed by the wife seeking for transfer of MC No.52/2023 pending on the file of the Senior Civil Judge at Kadur to the Principal Judge, Family Court, Mysuru.

2. For the sake of convenience, the parties herein are referred to as per their relationship.
3. The relevant facts necessary for consideration of the present petition are that the marriage between the parties was solemnized on 8.3.2021 and from the said wedlock a daughter was born to the parties on 4.8.2023. However, due to various reasons, the parties have been residing separately.
4. The wife has filed Crl.Misc.No.616/2023 under Section 125 of the Code of Criminal Procedure, 1973 seeking for maintenance, which is pending before the Principal Judge, Family Court, Mysuru. The wife has also filed Crl.Misc. No.104/2023 under the provisions of the Protection of Women from Domestic Violence Act, 2005 and CC No.343/2023 has been registered with regard to the complaint lodged by the wife under Section 498A of the Indian Pena Code, 1860. Both NC: 2024:KHC:6342 the said proceedings are pending consideration before the jurisdictional Court at Mysore. The respondent - husband has filed MC No.52/2023 under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking for divorce which is pending before the Senior Civil Judge at Kadur. Seeking for transfer of MC No.52/2023, the present petition is filed by the wife.
5. Learned counsel for the petitioner contends that the wife is staying along with her parents at the address mentioned in the cause title and the daughter of the parties is also under the care and custody of the wife. That, she is depending on her parents for the livelihood of herself and the daughter of the parties. Hence, he seeks for allowing of the present petition and granting of the reliefs as sought for.
6. Per contra, learned counsel for the respondent vehemently opposes grant of the relief sought for in the present petition and submits that the wife is an engineering graduate and has deliberately filed many cases against the husband. That the husband is a Railway employee and is currently posted at Tiptur Railway Station. That the husband is also required to travel to Kadur for the purpose of looking after NC: 2024:KHC:6342 his aged parents and if he is also required to travel to Mysuru for the purpose of prosecuting the proceedings initiated by him, great hardship will be caused to him. Hence, the learned counsel seeks for dismissal of the present petition.
7. The submissions of the learned counsel for the parties have been considered and the material on record has been perused. The question that arises for consideration is, whether the relief sought for in the present petition is required to be granted?

8. The relationship between the parties as also the pendency of the legal proceedings are undisputed.

9. It is clear that the wife is unemployed and that the care and custody of the daughter of the parties is with the wife. It is further clear that the wife does not have any independent source of income and is depending on her parents for the livelihood of herself and the daughter of the parties. That the distance between Mysuru and Kadur is about 200 kms. Hence, it is clear that great hardship will be caused to the wife if she is required to travel to Kadur for the purpose of contesting the proceedings initiated by the husband.

NC: 2024:KHC:6342

10. On the other hand, the husband is gainfully employed at Tiptur and is not staying at Kadur. It is further relevant to note that the husband in any event will be required to travel to Mysuru for the purpose of contesting the proceedings initiated by the wife. Having regard to the same and also keeping in mind the settled proposition of law as held by the Hon'ble Supreme Court in the case of N.C.V. AISHWARYA VS A.S.SARAVANA KARTHIK SHA¹ that while considering cases for transfer of matrimonial proceedings, the convenience of wife will have to be given precedence to, it is just and proper that the relief sought for in the present petition be granted. Accordingly, the question framed for consideration is answered in the affirmative.

11. In view of the aforementioned, the following order is passed:

ORDER i. The above petition is allowed; ii. MC No.52/2023 pending on the file of the Senior Civil Judge at Kadur shall stand transferred to the AIR ONLINE 2022 SC 1268 NC: 2024:KHC:6342 Principal Judge, Family Court, Mysuru. It shall be open to the Principal Judge, Family Court, Mysuru, to assign the transferred case to an appropriate Court; iii. Both the parties shall appear before the Principal Judge, Family Court, Mysuru, on 25.03.2024 without the requirement of any further notice being issued in this regard;

iv. Consequent to transfer, the transferee Court shall conduct further proceedings in accordance with law; v. If a request is made by any of the parties to participate in the transferred proceedings through video conferencing, the same shall be considered appropriately by the transferee Court in accordance with law; vi. All contentions of the parties are left open.

SD/-

JUDGE ND

Dr. Seema Bhutani vs State By Mysuru Women Police Station on 8 February, 2024

Author: K.Natarajan

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.3051 OF 2023

CONNECTED WITH

CRIMINAL PETITION NO.2579 OF 2023

IN CRIMINAL PETITION NO. 3051 OF 2023

BETWEEN

DR. SEEMA BHUTANI
W/O DR. PAVAN KUMAR,
AGED ABOUT 46 YEARS,
R/O NO.100 A, II FLOOR,
GAUTHAM NAGAR,
ADHAR NO. 502986584233
NEW DELHI - 110 049.

...PETITIONER

(BY SRI. SUDHARSHAN L., ADVOCATE)

AND:

- 1 . STATE BY MYSURU WOMEN POLICE STATION
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

- 2 . SHILPA SANJEEV
W/O SANJEEV DIMAN,

AGED ABOUT 45 YEARS,
R/O NO.92, B ZONE,

J.P.NAGAR, 3RD STAGE,
KOPPALURU, MYSURU - 570 031.

... RESPONDENTS

(BY SRI. VENKAT SATYANARAYANA, HCGP FOR R1;
SRI. B. VENKATA RAO, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO ALLOW THIS PETITION AND TO QUASH THE CHARGE SHEET IN C.C.NO.17788/2022 AND IN CR.NO.30/2021 FOR THE OFFENCE P/U/S 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509, 34 OF IPC ON THE FILE OF MYSORE WOMEN POLICE STATION AND PENDING ON THE FILE OF LEARNED XIII ADDL.CIVIL JUDGE AND J.M.F.C AT MYSURU.

IN CRIMINAL PETITION NO. 2579 OF 2023

BETWEEN:

1. MR. MOHAN LAL DHIMAN
S/O LATE SHRI GEETA RAM DHIMAN,
AGED ABOUT 75 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 662092161262,
HARYANA - 136 118.
2. MRS. ANITA RANI DHIMAN
W/O MOHAN LAL DHIMAN,
AGED ABOUT 61 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 662092161262,
HARYANA - 136 118.
3. MRS. SUMAN DHIMAN
W/O MADAN LAL SHARMA,
AGED ABOUT 51 YEARS,

R/O NO.1989-D,
ADHAR NO.559730314217

RAILWAY ROAD,
NARELA, NORTHWEST,
DELHI - 110 040.

4. MADAN LAL SHARMA
S/O JAI KISHAN DASS,
AGED ABOUT 53 YEARS,
R/O NO. 737013454891
RAILWAY ROAD,
NARELA, NORTHWEST,
DELHI - 110 040.
5. MR. ASHOK DHIMAN
S/O MOHAN LAL DHIMAN,
AGED ABOUT 52 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR N0994227275129,
KURUKSHETRA,
HARYANA - 136 118.
6. MRS. MONICA DHIMAN
W/O ASHOK DHIMAN,
AGED ABOUT 49 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 529311921253,
KURUKSHETRA,
HARYANA - 136 118.
7. MRS. RENU VISHAL OJHA
W/O MR. VISHAL OJHA,
AGED ABOUT 37 YEARS,
R/O NO.326, C-BLOCK,
T.G.LAKE VISTA, 152/2,
SINGASANDRA, BEGUR ROAD,

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BEGUR, NEAR LAGE POINT TOWER,
BEGURU,
ADHAR NO. 344666706357.
BENGALURU - 560 068.

...PETITIONERS

(BY SRI. SUDHARSHAN L., ADVOCATE)

AND :

1. STATE BY MYSURU WOMEN POLICE STATION

REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SHILPA SANJEEV
W/O SANJEEV DIMAN,
AGED ABOUT 45 YEARS,
R/O NO.92, B ZONE,
J.P.NAGAR, 3RD STAGE,
KOPPALURU, MYSURU - 570 031.

... RESPONDENTS

(BY SRI. VENKAT SATYANARAYANA, HCGP FOR R1;
SRI. B. VENKATA RAO, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.17788/2022 AND IN CR.NO.30/2021 FOR THE OFFENCE P/U/S 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509, R/W SEC.34 OF IPC ON THE FILE OF MYSORE WOMEN POLICE STATION AND PENDING ON THE FILE OF XIII ADDITIONAL CIVIL JUDGE AND J.M.F.C., MYSURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.1.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

5

ORDER

Criminal Petition No.2570/2023 filed by the petitioners accused Nos.2 to 8 and Criminal petition No.3051/2023 filed by accused No.9 under Section 482 of Cr.P.C for quashing the criminal proceedings in C.C. No.17788/2022 arising out of crime No.30/2021 registered by Mysuru Women police and charge sheeted for offence punishable under Section 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509 and 34 of IPC.

2. Heard the arguments of learned counsel for the petitioners in both cases and learned counsel for respondent No.2 and the learned High Court Government Pleader for respondent State.
3. The case of the prosecution is that on the complaint of respondent No.2, the police registered FIR. It is alleged by her that she has married accused No.1- Sanjeev Dhiman on 14.02.2000. The complainant has done Bachelor of Engineering in Computer Science and worked in U.K. The marriage of accused No.1 with respondent No.2 was love cum arranged marriage. Accused No.1 hails from Haryana and prior to the marriage, there was demand of dowry from the family of the accused and expected expensive gifts such as silver items to their family, Kinetic Honda vehicle, furniture, gold, etc. The parents-in-law were unhappy with the marriage as they are North Indian, they insulted respondent No.2. After the death of the mother of accused No.1, the father of accused No.1

married another woman having two daughters and there was displeasure in the family of the accused. Since the accused No.1 loved the complainant, her mother in law i.e. mother accused No.1 used to hurt and abuse her, prior to the marriage. Accused No.1 was not very close to his family as his father was dominating. A child was born out of the marriage of accused No.1 and respondent No.2-complainant. Both of them working in BOSCH company, India before the marriage. Accused No.1 got job at UK. After the marriage, her father-in-law took a separate account for expenses, he wanted the complainant to transfer the money, but accused No.1 refused it.

Whenever, the father-in-law taunt the complainant, accused No.1 was supporting her.

4. The complainant further alleged that her sister-in- law (accused No.4) used to criticize the complainant and her parents. Despite taking the financial support, they needed money for purchasing soap, shampoo, etc. Her brother-in- law Ashok Dhiman (accused No.6) would compare with his wife and criticise with cooking of the food. Around June 2006, her in-laws wanted to visit U.K., but she informed that she is having first trimester and not in good health. However, they booked ticket and came to U.K. Accused No.1 took the in-laws for site seeing, where accused No.2 insisted her to sit in back seat and created nuisance. For 3- 4 months, she suffered with bad nausea and vomiting, but accused No.1 made her to serve their in-laws. Accused No.1 made mental torture. The complainant's mother also visited U.K. to help the complainant and she stayed for two weeks. The in-laws wanted male issue. They abused her and accused No.1 supported their views. Whenever the complainant visited India, there was quarrel. Accused No.1's family expected gifts and her mother was serving the in-laws. They abused her stating that they must know cooking decent food. The in-laws were trying to damage the relationship of complainant with her husband.

5. The complainant has further alleged that as per her father's advise, she purchased 8 acres of land on 02.07.2007 in the joint family names. She has executed GPA on 27.12.2007 in favour of her father-in-law to safeguard the property. In 2008, the complainant found a match for her sister in-laws Renu, who is accused NO.8. The complainant spent Rs.5.00 lakhs. The complainant also delivered a second child in 2012, there was pooja. The sister-in-law Monica (accused No.7) visited U.K. brought many gifts to her. The complainant is having two sons, aged about 15 and 9 years, they were studying in U.K., but now the children are studying in Mysuru due to desertion. The mother of the complainant helped for purchasing the property around Bengaluru.

6. The complainant further alleged that in November 2014, a U.K. based company offered three years for working at Bangalore office. On 15th anniversary on 14.2.2015, they celebrated the marriage anniversary. Her family members came to Bangalore from Delhi. Accused No.7 is staying at Kurukshetra and came to Bangalore and stayed for three days. In 2016, accused No.8 got married and the complainant parents visited Kurukshetra for attending wedding. Accused No.1 spent lakhs of rupees. All the in- laws were happy and due to sibling rivalry, accused No.8 stopped speaking with her parents for three years.

7. It is further alleged that in 2016, accused No.1 contacted her girl friend school mate in whats-app group, 'Hum Panch' where they were sharing photographs. The female in the group used to call accused No.1 for lunch and they also visited their bungalow. Subsequently, the complainant

observed in the whatsapp that they were discussing porn pictures, models etc. Accused No.1 indulged in continuously chatting with them. The family of One Nikhil visited on a trip and on objection, accused No.1 told he would leave the whatsapp group.

8. Around August-September 2017, the company called the couple back to U.K. and accused NO.1 stated that he is unwell and he is having some problem, therefore, he wants to come to India to safeguard his health. In September 2017, they went to U.K. and resigned the job, Accused NO.1 told, he wanted medical leave, and they searched the house at Bangalore or Mysuru. Accused No.1 introduced accused No.9-Seema Butani, who is a doctor, for consultation and later, the behaviours of accused No.9 impressed the complainant to quit the job. Accused No.1 also convinced her to quit the job. Till November 2018, the complainant lived with accused No.1 at Mysuru and went to Delhi. Accused No.1 did not go to Delhi, but spent time with accused No.9. Accused No.1 on the health condition, resigned the job at U.K. and she has discussed with the Manager in June 2018 which came to knowledge of accused No.1 and the complainant agreed to return to India, but accused No.1 insisted her to come alone. In July 2019, accused No.1 came to India resigning the job. Later, he used to meet accused No.9 and he also attended her birthday. In July, when she was in U.K., she came to know through mobile phone of accused No.1 that there was picture of accused No.1 with accused No.9 in compromise poses on the dates. Then, the complainant called accused No.9, had conversation with her. August 2018. The complainant confronted the air tickets and picture of accused No.9 and she came to know that accused No.1 was having continuous contact with accused No.9.

9. On 21.08.2018, accused No.1 transferred the shares by executing GPA and the complainant trusted accused No.1 and she asked to install the CCTV camera. Even she called accused No.9 not to engage with her husband, either through message or whats-app and accused No.9 also agreed. But, later, the complainant realised that accused No.1 used to visit India only to meet accused No.9. Though accused No.9 attached with the noble profession, she is having unethical relationship with accused No.1, the act of accused No.9 is nothing but abatement.

10. In August 22, 2018, the complainant confronted the conversation, at that time, accused No.1 assaulted her physically and she took pills of large quantity and she was admitted to the hospital. Then message sent to the police and she gave statement against accused No.1. The police investigated the matter, accused No.1 begged to withdraw the complaint, and in order to protect him, the complainant did not lodge any complaint to the police. After discharge, she received a call from accused No.9, she felt guilty and expressed that accused No.1 damaged her mental health. Accused No.9 deceived the complainant and she asked accused No.1 to come to Delhi. The complainant asked for counselling but accused No.9 did not agree and, she has threatened the complainant. Subsequently, accused No.1 absconded for 30 minutes, and he switched off the phone. The complainant informed one Nikhil to advise accused No.1 and accused NO.9 and she also tried to speak with the husband of accused No.9, where her husband told the complainant that she should control her husband-accused No.1. The relationship of accused No.1 with accused No.9 continued and never stopped. Accused No.1 physically assaulted the complainant on the regular basis because of accused No.9.

11. The complainant further alleged that in October 2018, during Deepavali, she visited kurukshetra to the house of in-laws for advising accused No.1, but accused No.1 was reluctant, and hence, he came back to Mysuru. Accused No.1 delayed to travel to U.K. and he was playing hide and seek in order to show that he was not having touch with accused No.9, but she came to know that accused No.1 had conversation with accused No.9. The complainant and accused No.1 booked tickets, but it was postponing. Even when staying at U.K., accused No.1 told that she will walk out from the house and go to Delhi. Hence, the complainant contacted father in-law accused No.2 for advise. In spite of the same, the behaviour of accused No.1 was not changed and due to mental disturbance, the complainant was unable to concentrate on the work and accused No.1 misbehaved with her. Accused No.1 frequently contacting accused No.9 which has disturbed the life of the complainant. She also requested the other accused persons, but they have not helped her. Though the parents in-law advised accused No.1, but it was only eye wash. Due to the negligence by the family of the accused, she came back to Mysuru. She told her friends Dr. Deepa and Shilpa, and they advised accused No.1. The harassment of accused No.1 was unbearable and accused No.1 did not help her during her workload.

12. The complainant further alleged that she has communicated to the family members of accused No.1 regarding extra marital affair. Subsequently, in March 2020, due to Covid-19 lock down, she was suffering from the temperature and body pain, but accused No.1 did not take proper care. She also made a complaint to the U.K. Police. They registered a complaint under the Domestic Violence Act, including the marital affair. The police closed the complaint at the request of the complainant. During the phase, the mother-in-law and sister-in-law and wild behaviour of accused No.1, she has came out from trauma. In August/September 2020, accused No.1 got another job. The parents of the complainant gone to visit U.K. after the lock down, but accused No.1 postponed it. Accused No.1 had a detailed discussion with the complainant stating that he would continue relationship with accused No.9, but she did not agree. But in December 2020, accused No.1 travelled to Delhi and went to his in-laws house, she also came to India to solve the episode of accused No.9. Accused No.8 told that accused No.1 will not leave accused No.9 and the complainant should compromise. For that, the complainant refused it and then the complainant along with accused No.1 went to Kurukshetra to meet accused No.2 and her mother in law. She informed everything to them. Accused No.2 advised accused No.1 not to assault or harass the complainant. Accused No.8 was protecting accused No.1. After discussion with accused No.2, the complainant made complaint to NGO or police against accused No.1. During the discussion, accused No.2 informed that she should forget accused No.9 in respect of whatsapp group.

13. It is further alleged that on the advise of the in-laws, the complainant filed a complaint to the Hauz Khaz station, where the house of accused No.9 is situated. The family of the complainant went to the police station, DCP office, ACP office, lawyer and NGO at Delhi. The police and NGO during investigation, called accused No.9. Accused No.1 became furious, in order to save accused No.9 from the trouble. The mother in-law and sister in law Monica (accused No.7). Accused No.1 promised his step mother to give a commercial plot or building to the complainant for her future, but the property has been purchased in the joint name of complainant and sister in law. During that time, the children visited in-laws house, they were not looked after well.

14. She also requested accused No.2 to advise his son, but he defended accused No.1. The NGO also spoke bad about the complainant, she came to know that NGO also playing wrong cards. Accused No.1 said to take the kids to Mysuru and send them to U.K. to her sister's place, until their legal works gets over in Delhi. Accused No.1 did not take responsibilities as a father. Hence, forced her to take the children to U.K. The in-laws restricted her meeting with accused No.1. The accused persons told her not to come to home and she should stay in a hotel, but she refused to go to the hotel. Then her parents stayed in the hotel and she stayed in the house of the in-laws. During the night, accused No.1 was furious as the complainant and her parents came to Kurukshetra and he told that she should stop all the proceedings against him and accused No.9. He told that he will destroy her by using his father's political connection. The complainant told accused No.1 to stop illicit relationship with accused No.9.

15. The complainant further alleged that her in-laws made her feel so deceived, humiliated, insulted hurt by their tricks. She further alleged that accused No.9 promising full support on one side, has continued the relationship on the another side. The family members of accused No.1 scolded with abusive language in front of the NGO. The in-laws told that she should compromise until accused No.1 comes out from the relationship of accused No.9 and she refused the proposal and she decided to stay at Mysuru or U.K.

16. She further alleged that her mother-in-law and sister-in-law Monica (accused No.7) were supportive all these months and they did not speak a word. When the complainant went on street with the children, the accused No.9 came and asked her to sit in the car. The complainant went to the hotel where her parents stayed. Accused No.1 switched off his phone.

17. She further alleged that to add her to trauma, a friend of the complainant's family assisted at Delhi with police and getting threat calls. Then complainant should withdraw the complaint against accused No.9 and should be back to U.K. It is the master plan of accused No.9 who gave phone number to one Rajath. Rajath approached Noida police, but the police did not take the complaint. Hence, she decided to go to Mysuru. The NGO people told to advise accused No.1, when the complainant was admitted in the hospital in ICU, the NGO advised accused No.1 to give moral support. In July 2021, she requested accused No.1 for financial help, but he refused. After the Covid-19 lock down, she came to Delhi and registered a complaint at Hauz Khaz, police station. On 11.09.2021, accused No.1 told the complainant to withdraw the cases and misbehaved with her. There was panchayat held at Kurukshetra and she came to know that they will not support. Hence, she came to Mysuru for lodging the complaint. The Mysuru police further obtained information from the Hauz Khaz police.

18. The complainant has further alleged that, in October 2021, accused No.1 filed complaint with Kurukshetra police against the complainant. Later, she explained to the police and then, the police registered FIR against accused No.1 for misusing authority. Accused No.1 filed divorce case against her. In November 2021, the complainant along with her maternal uncle, travelled to Delhi to file a complaint to Hauz Khaz police, Delhi, but they advised to file the complaint to Noida police. After filing the divorce petition on 5.10.2022, accused No.1 and his family, who were the co-owners of the property, sold the property. Accused No.1 cancelled the GPA for selling the property. Accused No.1

conspired with accused No.9 and in-laws caused loss of property / business opportunities. Accused No.1 and accused No.9 made the complainant to live separately.

19. She has also alleged that the in-laws alleged that the complainant was having mental disorder to help accused No.1. She has further alleged that accused No.9 with her crooked plan along with accused No.1 pushing the complainant under depression and accused No.9 provoked accused No.1 to fight with complainant and planning to divorce her. Accused No.9 wanteds to continue to live with her husband and illicit relationship with accused No.1.

20. The complainant has further alleged that the in-laws forced her to accept the relationship of accused No.1 with accused No.9 and all the in-laws harassed her. Even though they know the dispute, they sold the property. Accused No.9 abetted accused No.1 for committing the harassment. Hence, prayed for taking action against the accused persons.

21. After registering the FIR, the police investigated the matter and filed charge sheet, which is under challenge.

22. The learned counsel appearing for the petitioners has contended that, on perusal of the entire contents of the complaint, there is no allegation against any of the petitioners in both cases. The entire allegation goes against accused No.1, who is the husband of respondent No.2. There is an allegation against accused No.9 that she had intimacy with accused No.1 and due to which accused No.1 mentally harassing the complainant. It is further contended that there is no report of any dowry by the petitioners. Accused No.1 and the complainant were residing at U.K. and they never stayed in the house of the petitioners. The marriage of accused No.1 with respondent No.2-complainant was held in the year 2000 and the complaint was filed after 21 years of marriage. Accused No.1 is having two male children. Accused No.1 is not before the Court. There is omnibus allegation against the petitioners and there is no specific allegation against the petitioners accused Nos.2 to 8.

23. The learned counsel for the petitioners further argued that the previously, the police filed a charge sheet against accused No.1 alone offence punishable under Sections 498A, 506 and 504 of IPC. Subsequently, further investigation was ordered after 9 months of the charge sheet. The present petitioners were falsely implicated in the additional charge sheet filed on 12.1.2023 by adding various other offences, which are not attracted. He further contended that the complainant colluded with the family members and with her influence, added these petitioners.

24. The learned counsel contended that most of the allegations are against accused No.1 when they stayed at England, Mysuru and Bangalore, whereas accused Nos.2 to 8 were staying at Kurukshetra in Haryana State. Therefore, absolutely, there is no material to frame charge against the petitioner accused Nos.2 to 8. In fact, they have supported the complainant as per the averments made in the complaint. Therefore, the proceedings against the accused persons are abuse of process of law and liable to be quashed.

25. The learned counsel would further contend that the allegation against accused No.9 is that she is the childhood friend of accused No.1, they came in contact in whatsapp group and they chatted through whatsapp. That itself, is not a ground to implicate for the offences punishable under Sections 498A and 109 or 114 or IPC. Accused No.9 is a practising doctor abd she has married a person having children, leading happy marital life and she is residing at Delhi. The complainant started harassing accused No.9, went to Delhi created a seen in the hospital, along with the police. Accused No.9 cannot be brought under the provisions of Section 498A of IPC. Accused No.9 is not the in-laws of the complainant. Therefore, prayed for quashing the charge sheet against the accused persons.

26. Per contra, learned counsel for respondent No.2- complainant filed statement of objections in both petitions and seriously objected the petitions contending that because of accused No.1, respondent No.2 undergone severe trauma, admitted in Aishwarya hospital. The other accused did not support her. There are call recordings in respect of accused No.1 and accused No.9. Accused No.1 started harassing the complainant due to extra marital relationship between himself and accused No.9. The complainant requested to stop the relationship, but they continued the same. A complaint was lodged against the accused No.1 and he was sent to jail in abroad. Subsequently, she has withdrawn the complaint against accused No.1. The other accused joined with accused No.1 and prevented respondent No.2 for taking action against accused No.1. The charge sheet material reveals that harassment meted out to respondent No.2 in the hands of accused No.1. The other accused joining with accused No.1, fought against respondent No.2. Accused No.1 planning to divorce the respondent No.2. There is audio CD available in charge sheet regarding conversation of accused No.1 and accused No.9. The other accused did not help the complainant for fighting against accused No.1. Accused Nos.1 and 9 hired rowdy sheeters and gave threatening call to the complainant for withdrawing the case against accused No.9. There was panchayath held to stop harassing respondent No.2 and she has complained regarding illicit intimacy of accused No.1 with accused No.9. The petitioners have provoked accused No.1 to file a complaint against respondent No.2 at Kurukshetra on 01.11.2021. The police also filed a complaint against accused No.1 for the offence punishable under Section 182 of IPC. Accused No.2 misused GPA executed by respondent No.2. There are witnesses speaking in respect of panchayath held in the presence of the elders. It is further contended that there are documents to show the accused persons involved in the crime. After recording the further statement, the police added the other accused. It is further contended that respondent No.2 requested accused No.1 to discontinue illicit relationship with accused No.9. but he is continuing. By denying the other averments in the petition, the learned counsel prayed for dismissing the petitions.

27. The learned counsel for respondent also contended that there is averment made by the petitioners for continuing the trial against them. Accused No.9 conspired with accused Nos.2 to 8 and cooperated for accused No.1 for the commission of offence, they threatened her. The accused persons instigated accused No.1 for commission of offence. The statement of witnesses reveals there is specific allegation against them. Hence, prayed for dismissing the petitions.

28. Having heard the learned counsel for the parties, perused the records.

29. On perusal of the first information statement of respondent No.2-complainant, she has elaborately narrated the story of life regarding the love marriage, birth of the children, staying at Bengaluru, Mysuru and U.K. Till 2016, there is no complaint against any of the accused persons either for demand of dowry or harassment by the petitioners. The trouble started only in the year 2016, when accused No.1 contacted accused No.9 through whatsapp group of their school mate in the name of 'Hum Panch', where accused No.1 said to be shared the pornography videos with the whatsapp group especially with accused No.9. When the same was questioned, accused No.1 said to be harassed respondent No.2. The entire allegations are against accused No.1 with regard to visiting India from U.K., there was quarrel between the husband and wife. Accused No.1 frequently visiting India to meet accused No.9 under the guise of treatment. The further allegation is that the telephonic conversation between accused No.1 and accused No.9 triggered the family quarrel between the husband and wife and therefore, the complainant approached accused No.2, who is father-in-law and other accused, who are the in-laws. They also supported respondent No.2. However, subsequently, some of the accused said to be advised the complainant to keep quite for some time and allow accused No.1 to continue the relationship with accused No.9. Except this allegation, nothing is mentioned in the entire complaint, that accused Nos.2 to 8 in Criminal Petition No.2579/2023 have committed any physical or mental harassment or demanded any dowry. Though there are some vague allegations against the accused persons that a property was purchased in the joint name of accused No.1 and the complainant, and she has executed a GPA to look after the property, but the said property has been sold by cancelling the GPA. Except this allegation, no ingredients were made out in the complain to attract Sections 498A, 506 and 504 of IPC against accused Nos.2 to 8 in order to face the trial by the petitioners. Respondent No.2 has already filed a civil suit in respect of the property. Merely the petitioners not supported the complainant on the subsequent event, though they supported the complainant at the initial stage. That itself, cannot be a ground to say that the petitioners were involved in commission of the offence to try along with accused No.1. Accused No.1 and respondent No.2 never stayed in the house of accused No.2 at Kurukshetra. They only visited some time and came back.

30. It is also seen from record that once the parents of the complainant went to Kurukshetra, and the petitioners requested to go and stay at hotel, but the complainant stayed in the house of accused No.2 and that itself, is not a ground to implicate the accused No.2 or his second wife in the case. Though it is alleged that step mother of accused No.1 or second wife of accused No.2 also assured to give some property to the complainant, but not given this aspect will also not attract Section 498A of IPC.

31. The provisions of Section 498A of IPC as under:

"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 purposes of this section, "cruelty means"--

(a) any wilful 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."

32. On careful reading of the aforesaid provision, Explanation to Section 498A of IPC, does not make out any offence as against accused Nos.2 to 8. If at all, the complainant is trying to commit suicide by taking sleeping tablets, it is because of the quarrel between accused No.1 and herself. Therefore, accused No.1 requires to face the trial. The petitioners have not at all stayed together with accused No.1 and complainant during their marital life.

33. Considering the said aspect, the police have rightly filed charge sheet against accused No.1 alone. Subsequently, due to pressure of the complainant, the police took up further investigation and just added accused Nos.2 to 8 and accused No.9. Accused No.9 has filed a separate petition and it will be discussed later. On perusal of the entire record, absolutely, there is no material against accused Nos.2 to 8 for proceeding with the trial. Therefore, as held by the Hon'ble Supreme Court in KAHKASHAN KAUSAR @ SONAM AND OTHERS VS. STATE OF BIHAR AND OTHERS reported in 2022 Livelaw (SC) 141, accused Nos.2 to 8 have been falsely implicated in the charge sheet on the pressure of respondent No.2- complainant. The Hon'ble Supreme Court in the case of Kahkashan Kausar has held as under:

41. Indian Penal Code, 1860- Section 498A - Incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever.

This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

Indian Penal Code, 1860- Section 498A -

Concern over the misuse of section 498A IPC - the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-

laws of the husband when no prima facie case is made out against them.

41. The Hon'ble Supreme Court has quashed the FIR against the accused persons in the above said case. Here, in this case, it is a classic case of falsely implicating the family members and other in order take revenge against accused No.1 who is said to be having intimacy with accused No.9. The entire complaint reads like autobiography of the respondent No.2-complainant. She has narrated the story, but there is no specific allegation against the petitioners for having committed the physical and mental harassment for demand of any dowry as per Explanation (1) to Section 498A of IPC. The entire grievance is against accused No.1-husband. It is simply alleged that the petitioners abated accused No.1 for harassment on the complainant, but in fact, they are all advised accused No.1 and supported the complainant from the beginning. Respondent No.2-complainant has also filed a civil suit and a divorce case is also pending between accused No.1 and respondent No.2. Therefore, the criminal proceedings against the petitioners are not sustainable under law.

34. As regards to the petition filed by accused No.9 in criminal petition No.3051/2023, she is a practising doctor and she is said to be having husband, and she has been implicated as accused No.9 in the case. As per the complaint, after 2016, accused No.1 formed whatsapp group with the school class mates and contacted accused No.9 and they said to be continued having illicit intimacy between them. They said to be taken photographs together and conversation between them, which was questioned by the complainant, the quarrel started. Accused No.1 said to be reluctant in discontinuing the relationship with accused No.9 and in spite of making complaint to the various persons, accused No.9 and accused No.1 continued their relationship which was named by respondent No.2 as illicit intimacy between accused No.1 and accused No.9. Therefore, it is stated in the complaint that accused No.9 abating accused No.1 for harassing the complainant under Section 498A of IPC. Therefore, it is contended by learned counsel for respondent No.2 that Sections 109 or 114 of IPC read with Section 498A of IPC attracts accused No.9.

35. Per contra, learned counsel for the petitioners has contended that accused No.9 is a doctor having good practice and reputation in the society. Because of some photographs accused No.9 with accused No.1 was found in the group, that itself will not constitute the offence under Section 498A of IPC or any other offences.

36. On careful reading of the allegation made by the complainant against accused No.9, it is nothing but accused No.1 and accused No.9 having illicit intimacy between them. Though she has stated that they are in compromise position, but no proper allegation is made in the complaint. Merely a photograph showing accused No.1 with accused No.9 since they are school friends and they are in the whatsapp group, that itself is not a ground that accused No.9 has abated accused No.1 for commuting the offence or harassing the complainant to attract Section 498A read with Section 109 or 114 of IPC.

37. Even if it is considered that the relationship of accused No.1 and accused No.9 is adultery, which is punishable under Section 497 of IPC, the Constitution Bench of the Hon'ble Supreme Court in the case of JOSEPH SHINE Vs. UNION OF INDIA reported in (2019)3 SCC 39, has struck down the provision of Section 497 of IPC as violative of Articles 14, 15(1) and 21 of the Constitution of India.

The judgment of the Constitution Bench of the Hon'ble Supreme Court has clearly held that the adultery is not an offence punishable under the IPC and it may be used for civil cases seeking remedy in the matrimonial cases.

38. Apart from that, as per Section 198 of Cr.P.C. even for the offence punishable under Section 494 of IPC, the police cannot file charge sheet, and the complainant requires to file complaint to the Magistrate. Sub-section (2) of Section 198 of Cr.P.C. read as under:

(1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, 1860 (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

PROVIDED that-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under ¹[section 494 or section 495] of the Indian Penal Code, 1860 (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [or, with the leave of the court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

PROVIDED that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the court, make a complaint, on his behalf.

Sub-section (7) as under:

7) The provisions of this section apply to the abetment of, or attempt to commit, offence as they apply to the offence.

39. On careful reading of Sub-section (7) of Section 198 of Cr.P.C., it clearly bars filing the police complaint for abatement or attempt to commit offences for Sections 494 or 495 of IPC before the police including Sections 109 or 114 or 511 of IPC. The allegation against accused No.9 is nothing but adultery. The allegation also reveals that she was abating accused No.1 for committing the offence under Section 498A of IPC. Accused No.9 is not a family member or in-laws in order to implicate under Section 498A of IPC and left with only Section 109 or 114 of IPC, which is an abatement or instigation for Section 497 or 494 of IPC, which is bar for taking cognizance under Section 198 of Cr.P.C. by the Magistrate. Therefore, proceeding against accused No.9 cannot be sustainable for the offence punishable under Section 498A of IPC or any other offences.

40. The learned counsel for respondent No.2 has relied upon the judgment of the Hon'ble Supreme Court in ANANT THANUR KARMUSE Vs. STATE OF MAHARASHTRA and others reported in (2023)5 SCC 802. This case is pertaining to the CBI matter, where FIR has been registered for various offences. In the facts and circumstances of the case, the said case is not applicable to the case on hand. The learned counsel for respondent has also relied upon the various judgments of the Hon'ble Supreme Court and they are not applicable to the case on hand. Since the quarrel is between accused No.1 and the complainant, it is purely in respect of the complainant's agitation against accused No.1, who is having affairs with accused No.9. Therefore, I am of the view that the arguments addressed by learned counsel for respondent No.2 is not sustainable under the law.

41. Looking to the entire facts and circumstances of the case, absolutely, there is no material against the petitioners No.1 to 8 for having committed any of the offences or abatement of Section 498A of IPC as the provision itself provides for the prosecution against the in-laws or husband. As regards accused No.9, it is as already held, the affairs between accused No.1 and accused No.9 is nothing but adultery, therefore, criminal case cannot be filed or FIR cannot be registered offence punishable under Section 497 of IPC in view of judgment of the Constitution Bench of the Hon'ble Supreme Court.

42. For the foregoing reasons, I pass the following order:

Both the Criminal Petitions i.e. Criminal Petition No.3051/2023 and Criminal Petition No.2579/2023 are allowed. The Criminal proceedings against the petitioners accused Nos.2 to 9 in C.C. No.17788/2022 arising out of Crime No.30/2021 registered by Mysuru Women police, now pending on the file of XIII Additional Civil Judge and J.M.F.C., Mysuru, is hereby quashed.

Sd/-

JUDGE Cs CT:SK

Mr. Mohan Lal Dhiman vs State By Mysuru Women Police Station on 8 February, 2024

Author: K.Natarajan

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.3051 OF 2023

CONNECTED WITH

CRIMINAL PETITION NO.2579 OF 2023

IN CRIMINAL PETITION NO. 3051 OF 2023

BETWEEN

DR. SEEMA BHUTANI
W/O DR. PAVAN KUMAR,
AGED ABOUT 46 YEARS,
R/O NO.100 A, II FLOOR,
GAUTHAM NAGAR,
ADHAR NO. 502986584233
NEW DELHI - 110 049.

...PETITIONER

(BY SRI. SUDHARSHAN L., ADVOCATE)

AND:

- 1 . STATE BY MYSURU WOMEN POLICE STATION
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

- 2 . SHILPA SANJEEV
W/O SANJEEV DIMAN,

AGED ABOUT 45 YEARS,
R/O NO.92, B ZONE,

J.P.NAGAR, 3RD STAGE,
KOPPALURU, MYSURU - 570 031.

... RESPONDENTS

(BY SRI. VENKAT SATYANARAYANA, HCGP FOR R1;
SRI. B. VENKATA RAO, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO ALLOW THIS PETITION AND TO QUASH THE CHARGE SHEET IN C.C.NO.17788/2022 AND IN CR.NO.30/2021 FOR THE OFFENCE P/U/S 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509, 34 OF IPC ON THE FILE OF MYSORE WOMEN POLICE STATION AND PENDING ON THE FILE OF LEARNED XIII ADDL.CIVIL JUDGE AND J.M.F.C AT MYSURU.

IN CRIMINAL PETITION NO. 2579 OF 2023

BETWEEN:

1. MR. MOHAN LAL DHIMAN
S/O LATE SHRI GEETA RAM DHIMAN,
AGED ABOUT 75 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 662092161262,
HARYANA - 136 118.
2. MRS. ANITA RANI DHIMAN
W/O MOHAN LAL DHIMAN,
AGED ABOUT 61 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 662092161262,
HARYANA - 136 118.
3. MRS. SUMAN DHIMAN
W/O MADAN LAL SHARMA,
AGED ABOUT 51 YEARS,

R/O NO.1989-D,
ADHAR NO.559730314217

RAILWAY ROAD,
NARELA, NORTHWEST,
DELHI - 110 040.

4. MADAN LAL SHARMA
S/O JAI KISHAN DASS,
AGED ABOUT 53 YEARS,
R/O NO. 737013454891
RAILWAY ROAD,
NARELA, NORTHWEST,
DELHI - 110 040.
5. MR. ASHOK DHIMAN
S/O MOHAN LAL DHIMAN,
AGED ABOUT 52 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR N0994227275129,
KURUKSHETRA,
HARYANA - 136 118.
6. MRS. MONICA DHIMAN
W/O ASHOK DHIMAN,
AGED ABOUT 49 YEARS,
R/O NO.358,
URBAN EAST, SECTOR 5,
ADHAR NO. 529311921253,
KURUKSHETRA,
HARYANA - 136 118.
7. MRS. RENU VISHAL OJHA
W/O MR. VISHAL OJHA,
AGED ABOUT 37 YEARS,
R/O NO.326, C-BLOCK,
T.G.LAKE VISTA, 152/2,
SINGASANDRA, BEGUR ROAD,

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BEGUR, NEAR LAGE POINT TOWER,
BEGURU,
ADHAR NO. 344666706357.
BENGALURU - 560 068.

...PETITIONERS

(BY SRI. SUDHARSHAN L., ADVOCATE)

AND :

1. STATE BY MYSURU WOMEN POLICE STATION

REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SHILPA SANJEEV
W/O SANJEEV DIMAN,
AGED ABOUT 45 YEARS,
R/O NO.92, B ZONE,
J.P.NAGAR, 3RD STAGE,
KOPPALURU, MYSURU - 570 031.

... RESPONDENTS

(BY SRI. VENKAT SATYANARAYANA, HCGP FOR R1;
SRI. B. VENKATA RAO, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.17788/2022 AND IN CR.NO.30/2021 FOR THE OFFENCE P/U/S 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509, R/W SEC.34 OF IPC ON THE FILE OF MYSORE WOMEN POLICE STATION AND PENDING ON THE FILE OF XIII ADDITIONAL CIVIL JUDGE AND J.M.F.C., MYSURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.1.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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ORDER

Criminal Petition No.2570/2023 filed by the petitioners accused Nos.2 to 8 and Criminal petition No.3051/2023 filed by accused No.9 under Section 482 of Cr.P.C for quashing the criminal proceedings in C.C. No.17788/2022 arising out of crime No.30/2021 registered by Mysuru Women police and charge sheeted for offence punishable under Section 498A, 107, 114, 120B, 406, 425, 323, 504, 506, 509 and 34 of IPC.

2. Heard the arguments of learned counsel for the petitioners in both cases and learned counsel for respondent No.2 and the learned High Court Government Pleader for respondent State.

3. The case of the prosecution is that on the complaint of respondent No.2, the police registered FIR. It is alleged by her that she has married accused No.1- Sanjeev Dhiman on 14.02.2000. The complainant has done Bachelor of Engineering in Computer Science and worked in U.K. The marriage of accused No.1 with respondent No.2 was love cum arranged marriage. Accused No.1 hails from Haryana and prior to the marriage, there was demand of dowry from the family of the accused and expected expensive gifts such as silver items to their family, Kinetic Honda vehicle, furniture, gold, etc. The parents-in-law were unhappy with the marriage as they are North Indian, they insulted respondent No.2. After the death of the mother of accused No.1, the father of accused No.1

married another woman having two daughters and there was displeasure in the family of the accused. Since the accused No.1 loved the complainant, her mother in law i.e. mother accused No.1 used to hurt and abuse her, prior to the marriage. Accused No.1 was not very close to his family as his father was dominating. A child was born out of the marriage of accused No.1 and respondent No.2-complainant. Both of them working in BOSCH company, India before the marriage. Accused No.1 got job at UK. After the marriage, her father-in-law took a separate account for expenses, he wanted the complainant to transfer the money, but accused No.1 refused it.

Whenever, the father-in-law taunt the complainant, accused No.1 was supporting her.

4. The complainant further alleged that her sister-in- law (accused No.4) used to criticize the complainant and her parents. Despite taking the financial support, they needed money for purchasing soap, shampoo, etc. Her brother-in- law Ashok Dhiman (accused No.6) would compare with his wife and criticise with cooking of the food. Around June 2006, her in-laws wanted to visit U.K., but she informed that she is having first trimester and not in good health. However, they booked ticket and came to U.K. Accused No.1 took the in-laws for site seeing, where accused No.2 insisted her to sit in back seat and created nuisance. For 3- 4 months, she suffered with bad nausea and vomiting, but accused No.1 made her to serve their in-laws. Accused No.1 made mental torture. The complainant's mother also visited U.K. to help the complainant and she stayed for two weeks. The in-laws wanted male issue. They abused her and accused No.1 supported their views. Whenever the complainant visited India, there was quarrel. Accused No.1's family expected gifts and her mother was serving the in-laws. They abused her stating that they must know cooking decent food. The in-laws were trying to damage the relationship of complainant with her husband.

5. The complainant has further alleged that as per her father's advise, she purchased 8 acres of land on 02.07.2007 in the joint family names. She has executed GPA on 27.12.2007 in favour of her father-in-law to safeguard the property. In 2008, the complainant found a match for her sister in-laws Renu, who is accused NO.8. The complainant spent Rs.5.00 lakhs. The complainant also delivered a second child in 2012, there was pooja. The sister-in-law Monica (accused No.7) visited U.K. brought many gifts to her. The complainant is having two sons, aged about 15 and 9 years, they were studying in U.K., but now the children are studying in Mysuru due to desertion. The mother of the complainant helped for purchasing the property around Bengaluru.

6. The complainant further alleged that in November 2014, a U.K. based company offered three years for working at Bangalore office. On 15th anniversary on 14.2.2015, they celebrated the marriage anniversary. Her family members came to Bangalore from Delhi. Accused No.7 is staying at Kurukshetra and came to Bangalore and stayed for three days. In 2016, accused No.8 got married and the complainant parents visited Kurukshetra for attending wedding. Accused No.1 spent lakhs of rupees. All the in- laws were happy and due to sibling rivalry, accused No.8 stopped speaking with her parents for three years.

7. It is further alleged that in 2016, accused No.1 contacted her girl friend school mate in whats-app group, 'Hum Panch' where they were sharing photographs. The female in the group used to call accused No.1 for lunch and they also visited their bungalow. Subsequently, the complainant

observed in the whatsapp that they were discussing porn pictures, models etc. Accused No.1 indulged in continuously chatting with them. The family of One Nikhil visited on a trip and on objection, accused No.1 told he would leave the whatsapp group.

8. Around August-September 2017, the company called the couple back to U.K. and accused NO.1 stated that he is unwell and he is having some problem, therefore, he wants to come to India to safeguard his health. In September 2017, they went to U.K. and resigned the job, Accused NO.1 told, he wanted medical leave, and they searched the house at Bangalore or Mysuru. Accused No.1 introduced accused No.9-Seema Butani, who is a doctor, for consultation and later, the behaviours of accused No.9 impressed the complainant to quit the job. Accused No.1 also convinced her to quit the job. Till November 2018, the complainant lived with accused No.1 at Mysuru and went to Delhi. Accused No.1 did not go to Delhi, but spent time with accused No.9. Accused No.1 on the health condition, resigned the job at U.K. and she has discussed with the Manager in June 2018 which came to knowledge of accused No.1 and the complainant agreed to return to India, but accused No.1 insisted her to come alone. In July 2019, accused No.1 came to India resigning the job. Later, he used to meet accused No.9 and he also attended her birthday. In July, when she was in U.K., she came to know through mobile phone of accused No.1 that there was picture of accused No.1 with accused No.9 in compromise poses on the dates. Then, the complainant called accused No.9, had conversation with her. August 2018. The complainant confronted the air tickets and picture of accused No.9 and she came to know that accused No.1 was having continuous contact with accused No.9.

9. On 21.08.2018, accused No.1 transferred the shares by executing GPA and the complainant trusted accused No.1 and she asked to install the CCTV camera. Even she called accused No.9 not to engage with her husband, either through message or whats-app and accused No.9 also agreed. But, later, the complainant realised that accused No.1 used to visit India only to meet accused No.9. Though accused No.9 attached with the noble profession, she is having unethical relationship with accused No.1, the act of accused No.9 is nothing but abatement.

10. In August 22, 2018, the complainant confronted the conversation, at that time, accused No.1 assaulted her physically and she took pills of large quantity and she was admitted to the hospital. Then message sent to the police and she gave statement against accused No.1. The police investigated the matter, accused No.1 begged to withdraw the complaint, and in order to protect him, the complainant did not lodge any complaint to the police. After discharge, she received a call from accused No.9, she felt guilty and expressed that accused No.1 damaged her mental health. Accused No.9 deceived the complainant and she asked accused No.1 to come to Delhi. The complainant asked for counselling but accused No.9 did not agree and, she has threatened the complainant. Subsequently, accused No.1 absconded for 30 minutes, and he switched off the phone. The complainant informed one Nikhil to advise accused No.1 and accused NO.9 and she also tried to speak with the husband of accused No.9, where her husband told the complainant that she should control her husband-accused No.1. The relationship of accused No.1 with accused No.9 continued and never stopped. Accused No.1 physically assaulted the complainant on the regular basis because of accused No.9.

11. The complainant further alleged that in October 2018, during Deepavali, she visited kurukshetra to the house of in-laws for advising accused No.1, but accused No.1 was reluctant, and hence, he came back to Mysuru. Accused No.1 delayed to travel to U.K. and he was playing hide and seek in order to show that he was not having touch with accused No.9, but she came to know that accused No.1 had conversation with accused No.9. The complainant and accused No.1 booked tickets, but it was postponing. Even when staying at U.K., accused No.1 told that she will walk out from the house and go to Delhi. Hence, the complainant contacted father in-law accused No.2 for advise. In spite of the same, the behaviour of accused No.1 was not changed and due to mental disturbance, the complainant was unable to concentrate on the work and accused No.1 misbehaved with her. Accused No.1 frequently contacting accused No.9 which has disturbed the life of the complainant. She also requested the other accused persons, but they have not helped her. Though the parents in-law advised accused No.1, but it was only eye wash. Due to the negligence by the family of the accused, she came back to Mysuru. She told her friends Dr. Deepa and Shilpa, and they advised accused No.1. The harassment of accused No.1 was unbearable and accused No.1 did not help her during her workload.

12. The complainant further alleged that she has communicated to the family members of accused No.1 regarding extra marital affair. Subsequently, in March 2020, due to Covid-19 lock down, she was suffering from the temperature and body pain, but accused No.1 did not take proper care. She also made a complaint to the U.K. Police. They registered a complaint under the Domestic Violence Act, including the marital affair. The police closed the complaint at the request of the complainant. During the phase, the mother-in-law and sister-in-law and wild behaviour of accused No.1, she has came out from trauma. In August/September 2020, accused No.1 got another job. The parents of the complainant gone to visit U.K. after the lock down, but accused No.1 postponed it. Accused No.1 had a detailed discussion with the complainant stating that he would continue relationship with accused No.9, but she did not agree. But in December 2020, accused No.1 travelled to Delhi and went to his in-laws house, she also came to India to solve the episode of accused No.9. Accused No.8 told that accused No.1 will not leave accused No.9 and the complainant should compromise. For that, the complainant refused it and then the complainant along with accused No.1 went to Kurukshetra to meet accused No.2 and her mother in law. She informed everything to them. Accused No.2 advised accused No.1 not to assault or harass the complainant. Accused No.8 was protecting accused No.1. After discussion with accused No.2, the complainant made complaint to NGO or police against accused No.1. During the discussion, accused No.2 informed that she should forget accused No.9 in respect of whatsapp group.

13. It is further alleged that on the advise of the in-laws, the complainant filed a complaint to the Hauz Khaz station, where the house of accused No.9 is situated. The family of the complainant went to the police station, DCP office, ACP office, lawyer and NGO at Delhi. The police and NGO during investigation, called accused No.9. Accused No.1 became furious, in order to save accused No.9 from the trouble. The mother in-law and sister in law Monica (accused No.7). Accused No.1 promised his step mother to give a commercial plot or building to the complainant for her future, but the property has been purchased in the joint name of complainant and sister in law. During that time, the children visited in-laws house, they were not looked after well.

14. She also requested accused No.2 to advise his son, but he defended accused No.1. The NGO also spoke bad about the complainant, she came to know that NGO also playing wrong cards. Accused No.1 said to take the kids to Mysuru and send them to U.K. to her sister's place, until their legal works gets over in Delhi. Accused No.1 did not take responsibilities as a father. Hence, forced her to take the children to U.K. The in-laws restricted her meeting with accused No.1. The accused persons told her not to come to home and she should stay in a hotel, but she refused to go to the hotel. Then her parents stayed in the hotel and she stayed in the house of the in-laws. During the night, accused No.1 was furious as the complainant and her parents came to Kurukshetra and he told that she should stop all the proceedings against him and accused No.9. He told that he will destroy her by using his father's political connection. The complainant told accused No.1 to stop illicit relationship with accused No.9.

15. The complainant further alleged that her in-laws made her feel so deceived, humiliated, insulted hurt by their tricks. She further alleged that accused No.9 promising full support on one side, has continued the relationship on the another side. The family members of accused No.1 scolded with abusive language in front of the NGO. The in-laws told that she should compromise until accused No.1 comes out from the relationship of accused No.9 and she refused the proposal and she decided to stay at Mysuru or U.K.

16. She further alleged that her mother-in-law and sister-in-law Monica (accused No.7) were supportive all these months and they did not speak a word. When the complainant went on street with the children, the accused No.9 came and asked her to sit in the car. The complainant went to the hotel where her parents stayed. Accused No.1 switched off his phone.

17. She further alleged that to add her to trauma, a friend of the complainant's family assisted at Delhi with police and getting threat calls. Then complainant should withdraw the complaint against accused No.9 and should be back to U.K. It is the master plan of accused No.9 who gave phone number to one Rajath. Rajath approached Noida police, but the police did not take the complaint. Hence, she decided to go to Mysuru. The NGO people told to advise accused No.1, when the complainant was admitted in the hospital in ICU, the NGO advised accused No.1 to give moral support. In July 2021, she requested accused No.1 for financial help, but he refused. After the Covid-19 lock down, she came to Delhi and registered a complaint at Hauz Khaz, police station. On 11.09.2021, accused No.1 told the complainant to withdraw the cases and misbehaved with her. There was panchayat held at Kurukshetra and she came to know that they will not support. Hence, she came to Mysuru for lodging the complaint. The Mysuru police further obtained information from the Hauz Khaz police.

18. The complainant has further alleged that, in October 2021, accused No.1 filed complaint with Kurukshetra police against the complainant. Later, she explained to the police and then, the police registered FIR against accused No.1 for misusing authority. Accused No.1 filed divorce case against her. In November 2021, the complainant along with her maternal uncle, travelled to Delhi to file a complaint to Hauz Khaz police, Delhi, but they advised to file the complaint to Noida police. After filing the divorce petition on 5.10.2022, accused No.1 and his family, who were the co-owners of the property, sold the property. Accused No.1 cancelled the GPA for selling the property. Accused No.1

conspired with accused No.9 and in-laws caused loss of property / business opportunities. Accused No.1 and accused No.9 made the complainant to live separately.

19. She has also alleged that the in-laws alleged that the complainant was having mental disorder to help accused No.1. She has further alleged that accused No.9 with her crooked plan along with accused No.1 pushing the complainant under depression and accused No.9 provoked accused No.1 to fight with complainant and planning to divorce her. Accused No.9 wanteds to continue to live with her husband and illicit relationship with accused No.1.

20. The complainant has further alleged that the in-laws forced her to accept the relationship of accused No.1 with accused No.9 and all the in-laws harassed her. Even though they know the dispute, they sold the property. Accused No.9 abetted accused No.1 for committing the harassment. Hence, prayed for taking action against the accused persons.

21. After registering the FIR, the police investigated the matter and filed charge sheet, which is under challenge.

22. The learned counsel appearing for the petitioners has contended that, on perusal of the entire contents of the complaint, there is no allegation against any of the petitioners in both cases. The entire allegation goes against accused No.1, who is the husband of respondent No.2. There is an allegation against accused No.9 that she had intimacy with accused No.1 and due to which accused No.1 mentally harassing the complainant. It is further contended that there is no report of any dowry by the petitioners. Accused No.1 and the complainant were residing at U.K. and they never stayed in the house of the petitioners. The marriage of accused No.1 with respondent No.2-complainant was held in the year 2000 and the complaint was filed after 21 years of marriage. Accused No.1 is having two male children. Accused No.1 is not before the Court. There is omnibus allegation against the petitioners and there is no specific allegation against the petitioners accused Nos.2 to 8.

23. The learned counsel for the petitioners further argued that the previously, the police filed a charge sheet against accused No.1 alone offence punishable under Sections 498A, 506 and 504 of IPC. Subsequently, further investigation was ordered after 9 months of the charge sheet. The present petitioners were falsely implicated in the additional charge sheet filed on 12.1.2023 by adding various other offences, which are not attracted. He further contended that the complainant colluded with the family members and with her influence, added these petitioners.

24. The learned counsel contended that most of the allegations are against accused No.1 when they stayed at England, Mysuru and Bangalore, whereas accused Nos.2 to 8 were staying at Kurukshetra in Haryana State. Therefore, absolutely, there is no material to frame charge against the petitioner accused Nos.2 to 8. In fact, they have supported the complainant as per the averments made in the complaint. Therefore, the proceedings against the accused persons are abuse of process of law and liable to be quashed.

25. The learned counsel would further contend that the allegation against accused No.9 is that she is the childhood friend of accused No.1, they came in contact in whatsapp group and they chatted through whatsapp. That itself, is not a ground to implicate for the offences punishable under Sections 498A and 109 or 114 or IPC. Accused No.9 is a practising doctor abd she has married a person having children, leading happy marital life and she is residing at Delhi. The complainant started harassing accused No.9, went to Delhi created a seen in the hospital, along with the police. Accused No.9 cannot be brought under the provisions of Section 498A of IPC. Accused No.9 is not the in-laws of the complainant. Therefore, prayed for quashing the charge sheet against the accused persons.

26. Per contra, learned counsel for respondent No.2- complainant filed statement of objections in both petitions and seriously objected the petitions contending that because of accused No.1, respondent No.2 undergone severe trauma, admitted in Aishwarya hospital. The other accused did not support her. There are call recordings in respect of accused No.1 and accused No.9. Accused No.1 started harassing the complainant due to extra marital relationship between himself and accused No.9. The complainant requested to stop the relationship, but they continued the same. A complaint was lodged against the accused No.1 and he was sent to jail in abroad. Subsequently, she has withdrawn the complaint against accused No.1. The other accused joined with accused No.1 and prevented respondent No.2 for taking action against accused No.1. The charge sheet material reveals that harassment meted out to respondent No.2 in the hands of accused No.1. The other accused joining with accused No.1, fought against respondent No.2. Accused No.1 planning to divorce the respondent No.2. There is audio CD available in charge sheet regarding conversation of accused No.1 and accused No.9. The other accused did not help the complainant for fighting against accused No.1. Accused Nos.1 and 9 hired rowdy sheeters and gave threatening call to the complainant for withdrawing the case against accused No.9. There was panchayath held to stop harassing respondent No.2 and she has complained regarding illicit intimacy of accused No.1 with accused No.9. The petitioners have provoked accused No.1 to file a complaint against respondent No.2 at Kurukshetra on 01.11.2021. The police also filed a complaint against accused No.1 for the offence punishable under Section 182 of IPC. Accused No.2 misused GPA executed by respondent No.2. There are witnesses speaking in respect of panchayath held in the presence of the elders. It is further contended that there are documents to show the accused persons involved in the crime. After recording the further statement, the police added the other accused. It is further contended that respondent No.2 requested accused No.1 to discontinue illicit relationship with accused No.9. but he is continuing. By denying the other averments in the petition, the learned counsel prayed for dismissing the petitions.

27. The learned counsel for respondent also contended that there is averment made by the petitioners for continuing the trial against them. Accused No.9 conspired with accused Nos.2 to 8 and cooperated for accused No.1 for the commission of offence, they threatened her. The accused persons instigated accused No.1 for commission of offence. The statement of witnesses reveals there is specific allegation against them. Hence, prayed for dismissing the petitions.

28. Having heard the learned counsel for the parties, perused the records.

29. On perusal of the first information statement of respondent No.2-complainant, she has elaborately narrated the story of life regarding the love marriage, birth of the children, staying at Bengaluru, Mysuru and U.K. Till 2016, there is no complaint against any of the accused persons either for demand of dowry or harassment by the petitioners. The trouble started only in the year 2016, when accused No.1 contacted accused No.9 through whatsapp group of their school mate in the name of 'Hum Panch', where accused No.1 said to be shared the pornography videos with the whatsapp group especially with accused No.9. When the same was questioned, accused No.1 said to be harassed respondent No.2. The entire allegations are against accused No.1 with regard to visiting India from U.K., there was quarrel between the husband and wife. Accused No.1 frequently visiting India to meet accused No.9 under the guise of treatment. The further allegation is that the telephonic conversation between accused No.1 and accused No.9 triggered the family quarrel between the husband and wife and therefore, the complainant approached accused No.2, who is father-in-law and other accused, who are the in-laws. They also supported respondent No.2. However, subsequently, some of the accused said to be advised the complainant to keep quite for some time and allow accused No.1 to continue the relationship with accused No.9. Except this allegation, nothing is mentioned in the entire complaint, that accused Nos.2 to 8 in Criminal Petition No.2579/2023 have committed any physical or mental harassment or demanded any dowry. Though there are some vague allegations against the accused persons that a property was purchased in the joint name of accused No.1 and the complainant, and she has executed a GPA to look after the property, but the said property has been sold by cancelling the GPA. Except this allegation, no ingredients were made out in the complain to attract Sections 498A, 506 and 504 of IPC against accused Nos.2 to 8 in order to face the trial by the petitioners. Respondent No.2 has already filed a civil suit in respect of the property. Merely the petitioners not supported the complainant on the subsequent event, though they supported the complainant at the initial stage. That itself, cannot be a ground to say that the petitioners were involved in commission of the offence to try along with accused No.1. Accused No.1 and respondent No.2 never stayed in the house of accused No.2 at Kurukshetra. They only visited some time and came back.

30. It is also seen from record that once the parents of the complainant went to Kurukshetra, and the petitioners requested to go and stay at hotel, but the complainant stayed in the house of accused No.2 and that itself, is not a ground to implicate the accused No.2 or his second wife in the case. Though it is alleged that step mother of accused No.1 or second wife of accused No.2 also assured to give some property to the complainant, but not given this aspect will also not attract Section 498A of IPC.

31. The provisions of Section 498A of IPC as under:

"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 purposes of this section, "cruelty means"--

(a) any wilful 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."

32. On careful reading of the aforesaid provision, Explanation to Section 498A of IPC, does not make out any offence as against accused Nos.2 to 8. If at all, the complainant is trying to commit suicide by taking sleeping tablets, it is because of the quarrel between accused No.1 and herself. Therefore, accused No.1 requires to face the trial. The petitioners have not at all stayed together with accused No.1 and complainant during their marital life.

33. Considering the said aspect, the police have rightly filed charge sheet against accused No.1 alone. Subsequently, due to pressure of the complainant, the police took up further investigation and just added accused Nos.2 to 8 and accused No.9. Accused No.9 has filed a separate petition and it will be discussed later. On perusal of the entire record, absolutely, there is no material against accused Nos.2 to 8 for proceeding with the trial. Therefore, as held by the Hon'ble Supreme Court in KAHKASHAN KAUSAR @ SONAM AND OTHERS VS. STATE OF BIHAR AND OTHERS reported in 2022 Livelaw (SC) 141, accused Nos.2 to 8 have been falsely implicated in the charge sheet on the pressure of respondent No.2- complainant. The Hon'ble Supreme Court in the case of Kahkashan Kausar has held as under:

41. Indian Penal Code, 1860- Section 498A - Incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever.

This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

Indian Penal Code, 1860- Section 498A -

Concern over the misuse of section 498A IPC - the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-

laws of the husband when no prima facie case is made out against them.

41. The Hon'ble Supreme Court has quashed the FIR against the accused persons in the above said case. Here, in this case, it is a classic case of falsely implicating the family members and other in order take revenge against accused No.1 who is said to be having intimacy with accused No.9. The entire complaint reads like autobiography of the respondent No.2-complainant. She has narrated the story, but there is no specific allegation against the petitioners for having committed the physical and mental harassment for demand of any dowry as per Explanation (1) to Section 498A of IPC. The entire grievance is against accused No.1-husband. It is simply alleged that the petitioners abated accused No.1 for harassment on the complainant, but in fact, they are all advised accused No.1 and supported the complainant from the beginning. Respondent No.2-complainant has also filed a civil suit and a divorce case is also pending between accused No.1 and respondent No.2. Therefore, the criminal proceedings against the petitioners are not sustainable under law.

34. As regards to the petition filed by accused No.9 in criminal petition No.3051/2023, she is a practising doctor and she is said to be having husband, and she has been implicated as accused No.9 in the case. As per the complaint, after 2016, accused No.1 formed whatsapp group with the school class mates and contacted accused No.9 and they said to be continued having illicit intimacy between them. They said to be taken photographs together and conversation between them, which was questioned by the complainant, the quarrel started. Accused No.1 said to be reluctant in discontinuing the relationship with accused No.9 and in spite of making complaint to the various persons, accused No.9 and accused No.1 continued their relationship which was named by respondent No.2 as illicit intimacy between accused No.1 and accused No.9. Therefore, it is stated in the complaint that accused No.9 abating accused No.1 for harassing the complainant under Section 498A of IPC. Therefore, it is contended by learned counsel for respondent No.2 that Sections 109 or 114 of IPC read with Section 498A of IPC attracts accused No.9.

35. Per contra, learned counsel for the petitioners has contended that accused No.9 is a doctor having good practice and reputation in the society. Because of some photographs accused No.9 with accused No.1 was found in the group, that itself will not constitute the offence under Section 498A of IPC or any other offences.

36. On careful reading of the allegation made by the complainant against accused No.9, it is nothing but accused No.1 and accused No.9 having illicit intimacy between them. Though she has stated that they are in compromise position, but no proper allegation is made in the complaint. Merely a photograph showing accused No.1 with accused No.9 since they are school friends and they are in the whatsapp group, that itself is not a ground that accused No.9 has abated accused No.1 for commuting the offence or harassing the complainant to attract Section 498A read with Section 109 or 114 of IPC.

37. Even if it is considered that the relationship of accused No.1 and accused No.9 is adultery, which is punishable under Section 497 of IPC, the Constitution Bench of the Hon'ble Supreme Court in the case of JOSEPH SHINE Vs. UNION OF INDIA reported in (2019)3 SCC 39, has struck down the provision of Section 497 of IPC as violative of Articles 14, 15(1) and 21 of the Constitution of India.

The judgment of the Constitution Bench of the Hon'ble Supreme Court has clearly held that the adultery is not an offence punishable under the IPC and it may be used for civil cases seeking remedy in the matrimonial cases.

38. Apart from that, as per Section 198 of Cr.P.C. even for the offence punishable under Section 494 of IPC, the police cannot file charge sheet, and the complainant requires to file complaint to the Magistrate. Sub-section (2) of Section 198 of Cr.P.C. read as under:

(1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, 1860 (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

PROVIDED that-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under ¹[section 494 or section 495] of the Indian Penal Code, 1860 (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [or, with the leave of the court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

PROVIDED that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the court, make a complaint, on his behalf.

Sub-section (7) as under:

7) The provisions of this section apply to the abetment of, or attempt to commit, offence as they apply to the offence.

39. On careful reading of Sub-section (7) of Section 198 of Cr.P.C., it clearly bars filing the police complaint for abatement or attempt to commit offences for Sections 494 or 495 of IPC before the police including Sections 109 or 114 or 511 of IPC. The allegation against accused No.9 is nothing but adultery. The allegation also reveals that she was abating accused No.1 for committing the offence under Section 498A of IPC. Accused No.9 is not a family member or in-laws in order to implicate under Section 498A of IPC and left with only Section 109 or 114 of IPC, which is an abatement or instigation for Section 497 or 494 of IPC, which is bar for taking cognizance under Section 198 of Cr.P.C. by the Magistrate. Therefore, proceeding against accused No.9 cannot be sustainable for the offence punishable under Section 498A of IPC or any other offences.

40. The learned counsel for respondent No.2 has relied upon the judgment of the Hon'ble Supreme Court in ANANT THANUR KARMUSE Vs. STATE OF MAHARASHTRA and others reported in (2023)5 SCC 802. This case is pertaining to the CBI matter, where FIR has been registered for various offences. In the facts and circumstances of the case, the said case is not applicable to the case on hand. The learned counsel for respondent has also relied upon the various judgments of the Hon'ble Supreme Court and they are not applicable to the case on hand. Since the quarrel is between accused No.1 and the complainant, it is purely in respect of the complainant's agitation against accused No.1, who is having affairs with accused No.9. Therefore, I am of the view that the arguments addressed by learned counsel for respondent No.2 is not sustainable under the law.

41. Looking to the entire facts and circumstances of the case, absolutely, there is no material against the petitioners No.1 to 8 for having committed any of the offences or abatement of Section 498A of IPC as the provision itself provides for the prosecution against the in-laws or husband. As regards accused No.9, it is as already held, the affairs between accused No.1 and accused No.9 is nothing but adultery, therefore, criminal case cannot be filed or FIR cannot be registered offence punishable under Section 497 of IPC in view of judgment of the Constitution Bench of the Hon'ble Supreme Court.

42. For the foregoing reasons, I pass the following order:

Both the Criminal Petitions i.e. Criminal Petition No.3051/2023 and Criminal Petition No.2579/2023 are allowed. The Criminal proceedings against the petitioners accused Nos.2 to 9 in C.C. No.17788/2022 arising out of Crime No.30/2021 registered by Mysuru Women police, now pending on the file of XIII Additional Civil Judge and J.M.F.C., Mysuru, is hereby quashed.

Sd/-

JUDGE Cs CT:SK

Mohammed Maheboob Chodhary vs Firdouse Fathima on 6 February, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:1323
CRL.P No. 200582 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 6TH DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.200582 OF 2023 (482)
BETWEEN:

MOHAMMED MAHEBOOB CHODHARY
S/O LATE MD. CHAND PASHA CHOWDHARY,
AGED ABOUT 42 YEARS,
OCC: POLICE HEAD CONSTABLE,
R/AT KALAGI TQ. AND DIST. KALABURAGI-585105.

...PETITIONER
(BY SRI B. C. JAKA, ADVOCATE)

AND:

FIRDOUSE FATHIMA

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA
(ALLEGED) W/O MD. MAHEBOOB CHOWDRI,
AGED ABOUT 29 YEARS, OCC: HOUSE HOLD,
R/AT KALAGI, TQ. AND DIST. KALABURAGI
NOW R/AT BIDAR-584401.

...RESPONDENT

(BY SRI JAIRAJ K. BUKKA, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
ALLOW THIS PETITION AND BE PLEASED TO QUASH THE CASE
REGISTERED IN CRL.MISC.NO.163/2018, PENDING ON THE FILE
OF JUDICIAL MAGISTRATE FIRST CLASS-II AT BIDAR, WHICH

WAS FILED BY THE RESPONDENT HEREIN U/SEC. 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT-2005, AGAINST THE PETITIONER TO SECURE THE ENDS OF JUSTICE AND TO PREVENT ABUSE OF PROCESS OF THE COURT AND PASS SUCH OTHER ORDER OR ORDERS, WHICH THIS HON'BLE COURT MAY BE PLEASED TO PASS, IN THE CIRCUMSTANCES OF THE CASE.

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NC: 2024:KHC-K:1323
CRL.P No. 200582 of 2023

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The learned counsel for petitioner submits that, inadvertently he filed criminal petition under Section 482 rather than an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 and sought for withdrawal of the petition.

The submission is placed on record. In view of the above submission, the petition is dismissed as withdrawn.

Sd/-

JUDGE DS

Hampanna S/O K Nagappa vs Chandrika K W/O. Kalyana Chakravarthi on 6 February, 2024

Author: N.S.Sanjay Gowda

Bench: N.S.Sanjay Gowda

-1-

NC : 2024:KHC-D:2519
CRL.P No. 103588 of 2023

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 6TH DAY OF FEBRUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA

CRIMINAL PETITION NO. 103588 OF 2023

BETWEEN:

1. HAMPANNA S/O K. NAGAPPA,
AGE. 69 YEARS, OCC. PENSIONER,
2. SMT. PARVATHI W/O. HAMAPANNA,
AGE. 56 YEARS, OCC. HOUSEWIFE,
3. SREEDHARA S/O. BASAVALINGAPPA,
AGE. 56 YEARS, OCC. BUSINESS,
4. SMT. NETRAVATHI D/O. LATE BASAVALINGAPPA,
AGE. 48 YEARS, OCC. HOUSEWIFE,
ALL ARE R/O. 1ST CROSS,
NEHRU CO-OPERATIVE COLONY,
HOSAPETE, DIST. BALLARI-583201.

... PETITIONERS

(BY SHRI M.V. HIREMATH, ADVOCATE)

Digitally

AND :

signed by

MANJANNA

MANJANNA E

E Date:

2024.02.08

CHANDRIKA K W/O. KALYANA CHAKRAVARTHI

11:17:50

+0530

D/O. SIDDAPPA K., AGE. 33 YEARS,
OCC. NIL, R/O. DOOR NO.1,
WARD NO.29, OPP. FOREST QUARTERS,

MAIN GATE, RAMANJINEYA NAGAR,
DIST. BALLARI-583102.

... RESPONDENT

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
SEEKING TO QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC
NO.199/2017 FILED FOR ALLEGED OFFENCES U/SEC. 12, 18, 19, 20
R/W SEC.22 & 23 OF THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005, IN THE INTEREST OF JUSTICE.

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NC: 2024:KHC-D:2519
CRL.P No. 103588 of 2023

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

1. Learned counsel appearing for the petitioner places on record the conciliation order passed by the Lok Adalath on 09.12.2023, whereby the dispute between the parties have been settled.
2. In view of the above, the proceedings initiated against the petitioner shall stand quashed as a result of the settlement that has arrived at in MFA No.102455/2019 C/w. MFA No.102456/2019.

The petition is therefore allowed.

Sd/-

JUDGE VNP/CT:BCK

Sri Anurag Tyagi vs Smt Shonezi Kumar on 5 February, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:4918
CRL.P No. 12414 of 2023
C/W CRL.P No. 11728 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 12414 OF 2023
C/W
CRIMINAL PETITION NO. 11728 OF 2023

IN CRL.P NO.12414/2023

BETWEEN:

1. SRI. ANURAG TYAGI
S/O SRI. AVINASH TYAGI,
AGED ABOUT 46 YEARS,
2. SRI. AVINASH CHAND TYAGI
S/O LATE. OM PRAKASH TYAGI,
AGED ABOUT 72 YEARS,
3. SMT. MANJU TYAGI
W/O SRI. AVINASH TYAGI,
AGED ABOUT 70 YEARS,

Digitally signed by
BHAVANI BAI G

Location: High
Court of Karnataka

ALL ARE R/AT NO.723,
BRIGADE COSMOPOLIS,
VARTHUR ROAD, WHITEFIELD,
BENGALURU - 560 066.

...PETITIONERS

(BY SRI. D.S.JAYARAJ, ADVOCATE)

AND :

1. SMT. SHONEZI KUMAR

D/O SRI. VINOD KUMAR TYAGI,

-2-

NC: 2024:KHC:4918

CRL.P No. 12414 of 2023

C/W CRL.P No. 11728 of 2023

W/O SRI. ANURAG TYAGI,
AGED ABOUT 42 YEARS,

2. MASTER ZAARYAN,
S/O SRI. ANURAG TYAGI,
AGED ABOUT 9 YEARS,

3. KUM. PARIZARA
D/O. SRI. ANURAG TYAGI,
AGED ABOUT 4 YEARS,

SINCE, RESPONDENT NOS.2 & 3
ARE MINORS,
RESPONDENT BY THEIR MOTHER/RESPONDENT NO.1

ALL ARE R/AT NO.D916,
DIVYASREE 77 PLACE,
YEMALUR, BENGALURU - 560 037.

. . . RESPONDENTS

(BY SRI. SHREYAS L. PATIL, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS
REGISTERED IN CRL.MISC.NO.170/2023 FILED BY THE
PETITIONER - RESPONDENT HEREIN UNDER THE PROVISION
OF SEC. 12 R/W 18, 20, 21 AND 22 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AS AGAINST
THE PETITIONERS, PENDING ADJUDICATION BEFORE THE
HONBLE METROPOLITAN MAGISTRATE TRAFFIC COURT - I
MAYO HALL AT BENGALURU VIDE ANNEXURE-A.

IN CRL.P NO.11728/2023
BETWEEN:

1. SRI. ANURAG TYAGI
S/O. AVINASH TYAGI,
AGED ABOUT 46 YEARS,

-3-

NC: 2024:KHC:4918

CRL.P No. 12414 of 2023

C/W CRL.P No. 11728 of 2023

2. SRI. AVINASH CHAND TYAGI
S/O LATE. OM PRAKASH TYAGI,
AGED ABOUT 72 YEARS,

BOTH ARE R/AT NO.723,
BRIGADE COSMOPOLIS,
VARTHUR ROAD, WHITEFIELD,
BENGALURU - 560 066.

...PETITIONERS

(BY SRI. D.S.JAYARAJ, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY
CUBBON PARK POLICE STATION,
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2. SMT. SHONEZI KUMAR
D/O SRI. VINOD KUMAR TYAGI,
W/O SRI. ANURAG TYAGI,
AGED ABOUT 42 YEARS,
R/AT NO.D916, DIVYASREE 77 PLACE,
YEMALUR, BENGALURU - 560 037.

...RESPONDENTS

(BY SMT. K.P.YASHODHA, HCGP FOR R1/STATE;
SRI. SHREYAS L. PATIL, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE FIR IN CR.NO.172/2023
BY THE CUBBON PARK POLICE STATION RESPONDENT NO.2
REGISTERING FOR THE OFFENCE P/U/S 415, 416, 417, 418,
419, 420, 465, 468, 471, 506 R/W SECTION. 120B OF IPC ON
THE FILE OF VIII ADDL.C.M.M., BENGALURU AND
CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN
FR.PCR.NO.8488/2023 BY PRODUCED AS ANNEXURE-A AND
A1.

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NC: 2024:KHC:4918
CRL.P No. 12414 of 2023
C/W CRL.P No. 11728 of 2023

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Crl.P.No.12414/2023 is filed by the petitioner Nos.1 to 3 for setting aside the issuance of process by the Magistrate in Crl.Misc.No.170/2023 filed by respondent No.1 under Section 12 read with Sections 18, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short

D.V. Act).

2. Crl.P.No.11728/2023 is filed by petitioners-accused Nos.1 and 2 challenging the FIR registered against them by the Cubbon Park Police Station, Bengaluru on the private complaint filed by respondent No.2 in Crime No.172/2023 for the offences punishable under Sections 415, 416, 417, 418, 419, 420, 465, 468, 471, 506 read with Section 120B of IPC arising out of FRNo.8488/2023 in PCR.

3. Heard the arguments of learned counsel for the petitioners, learned High Court Government Pleader for the State and learned counsel for respondent No.2.

4. The case of the petitioners in Crl.P.No.12414/2023 is that respondent No.1 along with respondent Nos.2 and 3 filed NC: 2024:KHC:4918 a petition under the D.V. Act by making various allegation against petitioner No.1 for having committed the domestic violence against her without maintaining properly throwing out of the house and making various allegations on her. Hence, prayed for allowing the petition seeking protection order as well as financial assistance against the petitioner No.1. The Trial Court after receipt of the petition issued notice to the petitioner Nos.1 to 3 in Crl.Misc.No.170/2023 which is under challenge.

5. Learned counsel for the petitioners has contended that on going through the entire averments made in the D.V. Act petition, there is no specific allegation against the petitioners. Petitioner No.1 was looking after the respondents by paying the education expenses apart from the maintenance. In spite of the same, the respondent filed this petition only to harass the petitioner No.1 and also added petitioner Nos.2 and 3 who were the parents of petitioner No.1 and they are nothing to do with petitioner No.1. Learned counsel also contended that in various cases filed by respondent No.1, the courts have discharged the petitioner Nos.2 and 3 from the cases and hence, prayed for quashing the same.

NC: 2024:KHC:4918

6. Per contra, learned counsel for respondent Nos.1 to 3 has contended that the respondent No.1 along with the children were thrown out without proper maintenance and the petitioner No.1 also trying to evict the respondents from the rented house by making the land lord to file the suit where he has filed written statement for allowing the suit and decreeing the suit against the respondents and the respondent No.1 was unable to protect her interest in the civil case and where this Court already stayed the cases under the D.V. Act. Therefore, if the said suit is decreed, the wife and children will be thrown out of the house. Hence, prayed for dismissing the petition.

7. In Crl.P.No.11728/2023, it is alleged by the respondent in the complaint that the petitioner-accused No.1 forged her signature and sent the application to the SBI for making him as a joint account holder. Subsequently, he became a joint account holder, thereafter, he freezed the account, thereby respondent No.2 was unable to maintain the account and draw the money and she has left with no food and in all the cases, the petitioner has obtained the interim order. The matter requires investigation. Hence, filed the complaint NC: 2024:KHC:4918 before the Magistrate and

got it referred to the Police, in turn the Police registered the FIR, which is under challenge.

8. The learned counsel for the petitioner-accused has seriously contended that there is no allegation against petitioner No.2, the father of petitioner No.1 who is accused No.1. The allegation is only vague and there is no case for investigation. The petitioner also issued a cheque for Rs.90,00,000/- which was received by the respondent. Hence, prayed for quashing the FIR.

9. Per contra, learned counsel for respondent No.2 objected the petition and contended that Rs.90,00,000/- paid by the petitioner towards the payment of premium for the education expenses of the children which is still lying in the Bank and not encashed by respondent No.2 which is nothing to do with the payment of the education expenses and maintenance. Hence, prayed for dismissing the petition. Learned High Court Government Pleader also objected the petition and contended that the matter requires investigation.

10. Having heard the arguments and on perusal of the records, in Crl.P.No.12414/2023, on careful reading of the NC: 2024:KHC:4918 petition filed by respondent Nos.1 to 3 under Section 12 of the D.V. Act, where most of the allegation is against the petitioner No.1 who is husband of the respondent No.1 and none of the allegation against the petitioner Nos.2 and 3 except the allegation that petitioner No.1 sold the property and sale proceeds has been given to his parents and hence, prayed for refund of the said amount. Even there is no prayer against the petitioner Nos.2 and 3 under the D.V. Act except protection order and financial assistance from petitioner No.1. There is no specific allegation against petitioner Nos.2 and 3 in the D.V. Act proceedings. Therefore, continuing the process against petitioner Nos.2 and 3 who are the parents of the petitioner No.1 in the D.V. Act proceedings is nothing but abuse of process of law and liable to be quashed. However, there is serious allegation against the petitioner No.1-husband of respondent No.1 for having committed the domestic violence and there are various allegations and various prayer against him, therefore, the proceeding against petitioner No.1 required to be continued before the Magistrate. Hence, Crl.P.No.12414/2023 is required to be allowed in part NC: 2024:KHC:4918

11. In respect of the another petition filed by the accused Nos.1 and 2 regarding complaint filed by respondent No.2, there is specific allegation against accused No.1, where he said to be forged the signature of respondent No.2 and obtained a joint account from the Banker and thereafter, he frozen the account. There is specific allegation under Sections 419 and 420 of IPC as accused No.2 is said to be assisted his son. On perusal of the same, there is no specific allegation against the accused No.2 in the complaint made by the respondent No.2 as against the husband-accused No.1 where he said to be forged the signature, created the document, frozen the account and cheated the complainant. Therefore, the case against accused No.1 required to be investigated by the Police and file the final report. The Court cannot interfere with the investigation of the case against accused No.1. However, there is no allegation against accused No.2 for having assisted or abetted accused No.1 for committing any such offences. Therefore, the FIR against accused No.2 is liable to be quashed.

12. It is needless to say, the learned counsel for the respondent submits that petitioner No.1 i.e., accused No.1 trying to evict respondent No.2 from the rented house by filing

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NC: 2024:KHC:4918 the application by giving consent for decreeing the suit and that has to be considered by the Civil Court in the trial, if this Court cannot give any findings on this issue. However, the submission of respondent counsel is placed on record.

13. Considering the same, I proceed to pass the following ORDER Both the petitions are allowed in part.

The petition filed by the petitioner No.1 in both the cases are hereby dismissed.

However, the proceedings against petitioner Nos.2 and 3 in D.V. Act proceedings is hereby quashed. Likewise, the FIR against accused No.2 in Crime No.172/2023 is hereby quashed.

The respondent is permitted to seek maintenance before the Magistrate under the D.V. Act proceedings and if any application is filed by the respondent, that shall be considered by the Magistrate in accordance with law.

Sd/-

JUDGE MV, GBB List No.: 1 Sl No.: 13_CT:SK

Kamala W/O Hanmanth Kunchikorvar vs Hanmanth S/O Basavaraj Kunchikorvar on 5 February, 2024

Author: S G Pandit

Bench: S G Pandit

- 1 -

NC: 2024:KHC-D:2495-
MFA No.23370 of 20

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

PRESENT

THE HON'BLE MR JUSTICE S G PANDIT

AND

THE HON'BLE MR JUSTICE K V ARAVIND

MISCELLANEOUS FIRST APPEAL NO.23370 OF 2013 (MC)

BETWEEN:

SMT. KAMALA W/O HANMANTH KUNCHIKORVAR,
AGE:26 YEARS, OCC: HOUSE HOLD,
R/O: C/O: MARUTHI KUNCHIKORVAR
(JADUVALA) AMBEDKAR ONI,
SHIVAJI NAGAR GALLI,
NOW AT R/O: DEVARA ROAD,
TQ AND DIST: POONA,
STATE: MAHARASHTRA.

...APPELLANT
(BY SRI. ANAND R KOLLI, ADVOCATE)

Digitally signed
by K M

AND:

SOMASHEKAR

KM
SOMASHEKAR Date:

2024.02.09
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+0530

SRI. HANMANTH
S/O BASAVARAJ KUNCHIKORVAR,
AGE: 30 YEARS, OCC: COOLIE,
R/O: ILAKAL, TQ: HUNGUND,
DIST: BAGALKOT.

(BY SRI. GANESH RAIBAGI, ADVOCATE)

... RESPONDE

THIS MFA IS FILED UNDER SECTION 28 OF THE HINDU MARRIAGE ACT 1955, AGAINST THE JUDGMENT AND DECREE DATED 27.03.2010, PASSED IN MATRIMONIAL CASE NO.22/2009 ON THE FILE OF THE SENIOR CIVIL JUDGE, BADAMI SITTING AT ITINERAR COURT HUNGUND, ALLOWING THE PETITION FILED U/SEC. 13(1) OF THE HINDU MARRIAGE ACT.

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NC: 2024:KHC-D:2495-DB
MFA No.23370 of 2013

THIS APPEAL, COMING ON FOR HEARING,
S G PANDIT, J., DELIVERED THE FOLLOWING:

THIS DAY,

JUDGMENT

Heard Sri. Anand R.Kolli, learned counsel for the appellant, and Sri. Ganesh Raibagi, learned counsel for the respondent.

2. This appeal is filed challenging the judgment and decree dated 27.03.2010 passed in M.C. No.22/2009 by the Senior Civil Judge, sitting at Itinerary Court Hungund, whereby the petition filed by the respondent- husband is allowed dissolving the marriage of the petitioner and the respondent.

3. On 08.09.2021, this Court recorded the following:

"Pursuant to the order dated 24.8.2021 passed by this Court directing the appellant/wife to furnish memorandum of additional facts and also respondent/husband to file proposal for settlement, parties and their respective counsels are present before this Court.

It is submitted on behalf of the appellant/wife that decree for partition has been passed in OS No.45/2010 on the file of the learned I Addl. Senior Civil Judge & CJM, NC: 2024:KHC-D:2495-DB Vijayapur, in terms of which, the appellant/wife and minor children have been allotted 1/24th share in the properties referred to therein.

She also furnishes a copy of the order passed on Applications under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women From Domestic Violence Act in Crl.Misc. Appln. No.93/2011 on the file of learned JMFC, Vadgaon, at Vadgaon on Maval, Pune, in terms of which the respondent/husband has been directed to pay a sum of Rs.7,000/- per month to the appellant/wife, Rs.2,500/- per month each to minor children. That apart, respondent/husband has also been directed to pay a sum of Rs.5 lakhs as compensation under Section 22 of the said Act. Respondent/husband has also been directed to provide accommodation or in the alternative to pay Rent of Rs.10,000/- per month to the appellant-wife. It is submitted that the said matter is pending adjudication.

Learned counsel for the respondent/husband submitted that pursuant to the order passed in Crl.Misc. Application No.93/2011, he has, on three occasions, paid a sum of Rs.1,00,000/-, Rs. 75,000/- and Rs.25,000/- respectively. Thus, there is no dispute with regard to the aforesaid aspect of the matter. Pursuant to the proposal for settlement, respondent/husband who is personally present along with his father Basavaraj duly represented by his counsel agrees and undertakes to pay a sum of Rs.25 lakhs to the appellant-wife as full and final settlement towards permanent alimony in three installments within a period of three months. He further submits that within a period of fifteen days from today, he will pay a sum of Rs.5 lakhs and balance amount of Rs.20 lakhs would be paid in two installments in the remaining period of three months. The appellant/wife represented by her counsel has no objection to receive the said amount of Rs.25 lakhs as full and final settlement towards permanent alimony. On instructions, she also undertakes that on receipt of the aforesaid amount of Rs.25 lakhs, she would withdraw all proceedings initiated by her against the respondent/husband and also any other pending case before the Court at Pune.

It is made clear that the aforesaid understanding arrived at between the parties is subject to filing of memorandum of compromise petition before this Court on the next date of hearing duly signed by the parties and NC: 2024:KHC-D:2495-DB their respective counsels. It is also made clear that above proposal of settlement is in addition to the decree for partition passed in OS No.45/2010 and the appellant/wife and the minor children would be entitled to execute the said decree of partition which is not the subject matter of this settlement.

The appellant/wife is hereby directed to furnish details of her bank account enabling the respondent/husband to remit the aforesaid amount of Rs.5 lakhs as agreed herein above.

The parties shall be present before this Court on 27.9.2021, on which day, the respondent/husband shall pay a sum of Rs.5 lakhs as agreed and undertaken herein above by him to show his bonafide.

Re-list on 27.9.2021."

As recorded above, both the appellant and the respondent agreed to settle the issue and respondent agreed to pay Rs.25,00,000/- as permanent alimony to the wife. Accordingly, till today, the respondent-husband has paid in total a sum of Rs.17,00,000/- to the appellant-wife. Today, the respondent-husband hands over a Demand Draft, dated 19.01.2024, drawn on State Bank of India, for a sum of Rs.8,00,000/- to the appellant-wife towards balance amount of permanent alimony which the appellant-wife receives and acknowledges.

NC: 2024:KHC-D:2495-DB

4. Today, both - the appellant Smt. Kamala and the respondent Sri. Hanmanth - are present before the Court and they are identified by their respective counsels. They file a compromise petition under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, signed by them and their respective counsels. The terms and conditions of the compromise petition read as follows:

"1. The present appellant had filed a suit for the relief of partition and separate possession through minors bearing OS No. 45/2010 on the file of Hon'ble 1st Additional Senior Civil Judge and CJM Vijaypur and the said suit was attained finality and the suit was decreed in part. And also the Execution Petition is pending in EP No. 56/2009 on the file of 1st Addition Civil Judge Sr. Dn Vijaypur and it is made clear that the rights of the plaintiff No. 2 and 3 in OS No. 45/2010 will not come into the way of for entitlement to execute their decree for the relief of partition and separate possession. And the present settlement is only in respect of the permanent alimony of the appellant only not the rights of the minor children and their rights of property is subjected to the suit bearing OS No. 45/2010. And the same has been agreed by the appellant and respondents herein.

NC: 2024:KHC-D:2495-DB

2. On the discussion between the elders of the family the respondents had agreed and undertake before this Hon'ble court to pay a sum of Rs. 25,00,000/- (Rupees Twenty Five lakhs only) to the appellant (wife) as a permanent alimony and out of 25 lakhs the respondents herein had already paid a sum of Rs. 17,00,000/- (Rupees Seventeen Lakhs only) in favour of the appellant and the remaining balance of Rs. 8,00,000/- (Rupees Eight lakhs only) has been paid today by way of demand draft. And in respect of fixing the permanent alimony has been agreed by the appellant and respondents herein and the appellant had given up right of maintenance in future as against the respondents herein. And the same has been agreed by both the parties.

3. That appellant No. 1 had also filed a Criminal Miscellaneous application 93/2011 on the file of the Learned JMFC Vadagaon on Maval Pune Maharashtra and for the relief of maintenance. And the Hon'ble court had granted Rs. 22,000/- per month to the appellant Rs.2,500 to the minor children. And in view of the present settlement

in the present appeal the appellant had agreed to withdraw the said petition filed before Pune Court unconditionally. And accordingly, the appellant had filed a Memo before this Hon'ble court on 11.12.2023 bringing to the NC: 2024:KHC-D:2495-DB notice of this Hon'ble court that she has withdrawn all the three matters (Criminal MA No. 61/20212, Crl. App 643/2015 and MrsL.MA 684/2022) and no other proceedings is left before any of the court in Maharashtra State. And the copy of the order sheets is also produced along with a memo. Hence the same has been agreed by the respondents herein.

4. It is made clear in pursuance of the order passed by this Hon'ble court dated 08.09.2021 the rights of the parties in OS No. 45/2010 is in addition to the decree and the appellant wife and the minor children would be entitled and the liberty to execute the decree for the relief of partition and separate possession and the present compromise petition will not come to the way of deciding the rights of the parties in OS No. 45/2010 and the minor children would be entitled to execute the decree and the appellant and the minor children would be entitled decree for possession before the competent court.

And the same has been agreed by the respondents herein.

5. Further the appellant hereby agreed to give the divorce as against the respondent and dissolve the decree of divorce in view of the compromise petition in the interest of justice.

NC: 2024:KHC-D:2495-DB Wherefore the appellant and the respondent have jointly filed this Compromise petition and all the parties in the top noted petition have willfully agreed and understood the contents of the compromise petition And further the contents of the compromise petition is explained in Kannada language and also in Marathi Language and also brought to the notice of the elders of the family. And accordingly both the parties have understood and willfully agreed and same has been explained by the respective counsels to the respective parties and the same has been agreed by the both the parties. And signed for the compromise petition"

5. The compromise petition would state that the wife has agreed for dissolution of marriage on receiving a sum of Rs.25,00,000/- in full and final settlement of permanent alimony subject to the rights of the parties pursuant to the judgment and decree passed in O.S. No.45/2010 by the Senior Civil Judge, Bijapur.

6. On going through the terms and conditions of the compromise, we are satisfied that the same is in NC: 2024:KHC-D:2495-DB accordance with law and could be accepted in the interest of the parties.

7. In terms of the compromise petition filed today, the appeal is disposed of; the judgment and decree, dated 27.03.2010 passed in M.C. No.22/2009 by the Senior Civil Judge, Badami, sitting at Itinerary Court, Hungund, is hereby confirmed; and the marriage solemnized between the appellant and the respondent stands dissolved.

Sd/-

JUDGE Sd/-

JUDGE KMS

Thanupriya vs Bharath S on 2 February, 2024

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NC: 2024:KHC:4598
CP No. 403 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE C.M. POONACHA
CIVIL PETITION NO. 403 OF 2023

BETWEEN:

1. THANUPRIYA
W/O BHARATH S
AGED ABOUT 23 YEARS
R/O OPP LIONS PARK
2ND MAIN, 22ND CROSS
KUVEMPU NAGAR
HASSAN-573201

...PETITIONER

(BY MS. ANUPAMA D.A., ADVOCATE FOR
SRI. GIRISH B BALADARE., ADVOCATE)

AND:

1. BHARATH S
S/O LATE SOMACHAR
AGED ABOUT 30 YEARS

Digitally
signed by
BHARATHI S
Location:
HIGH
COURT OF
KARNATAKA
R/O NO.1896/3
4TH MAIN, 1ST CROSS
VINOBHA NAGAR
DAVANAGERE-577001

...RESPONDENT

(BY SRI. S G RAJENDRA REDDY.,ADVOCATE)

THIS CIVIL PETITION IS FILED UNDER SEC.24 OF CPC,
PRAYING TO TRANSFER THE M.C. 09/2022 WHICH IS PENDING ON
THE FILE OF FAMILY COURT AT DAVANAGERE TO FAMILY COURT AT
HASSAN IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

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NC: 2024:KHC:4598

ORDER

The present petition is filed by the wife seeking for transfer of MC No.09/2022 pending on the file of the Family Court, Davanagere, to the Family Court, Hassan.

2. For the sake of convenience, the parties herein are referred to as per their relationship.
3. The relevant facts necessary for consideration of the present petition are that the marriage between the parties was solemnized on 14.3.2019 and from the said wedlock a daughter was born to the parties on 4.7.2021. However, due to various reasons, the parties have been residing separately.
4. The petitioner - wife has filed Crl.Misc.No.357/2022 under the provisions of the Protection of Women from Domestic Violence Act, 2005 which is pending before the IV Additional Civil and JMFC, Court, Hassan. It is also forthcoming that a suit in OS No.139/2023 instituted against the respondent - husband is pending before the Principal Senior Civil Judge, Hassan, for partition. The husband has filed MC No.09/2022 under Section 9 of the Hindu Marriage Act, 1955, seeking for restitution of conjugal rights, which is pending before the Family Court, NC: 2024:KHC:4598 Davanagere. Seeking for transfer of MC No.09/2022 the present petition is filed by the wife.
5. Learned counsel for the petitioner submits that the wife is staying along with her parents and she has no independent source of income. That the daughter of the parties is also under the care and custody of the wife. That the wife is depending on her parents for the livelihood of herself as well as the daughter of the parties. That the distance between Hassan and Davanagere is about 240 kms. Hence, she seeks for allowing of the present petition and granting of the reliefs as sought for.
6. Per contra, learned counsel for the respondent opposes transfer of the proceedings initiated by the husband. He submits that the husband is required to look after his business as well as he has other commitments at Davanagere. That the husband will also be put to great hardship if the proceedings are transferred and hence, seeks for dismissal of the petition.
7. The submissions of the learned counsel for the parties have been considered and the material on record has NC: 2024:KHC:4598 been perused. The question that arises for consideration is, whether the relief sought for in the present petition is to be granted?
8. It is forthcoming that the relationship between the parties as also the pendency of the legal proceedings are un-disputed. It is also forthcoming that the wife does not have any independent source of income and the care and custody of the daughter of the parties is also with the wife. In view of the same and having regard to the fact that the distance between Hassan and Davanagere is about 240 kms., it is clear that the wife will be put to great hardship if she is required to travel to Davanagere to contest the proceedings initiated by the husband.

9. On the other hand, although the husband will be put to some hardship if he is required to travel to Hassan for the purpose of prosecuting the proceedings initiated by him, having regard to the fact that he is gainfully employed and has an independent source of income as also the fact that in any event he will be required to travel to Hassan for the purpose of contesting the other proceedings initiated by the wife and NC: 2024:KHC:4598 having regard to the settled proposition of law as held by the Hon'ble Supreme Court in the case of N.C.V. AISHWARYA VS A.S.SARAVANA KARTHIK SHA1 that while considering cases for transfer of matrimonial proceedings, the convenience of the wife will have to be given precedence to, it is just and proper that the relief sought for in the present petition be granted. Accordingly, the question framed for consideration is answered in the affirmative.

10. In view of the aforementioned, the following order is passed:

ORDER i. The above petition is allowed; ii. MC No.09/2022 pending on the file of the Family Court, Davanagere, shall stand transferred to the Principal Judge, Family Court, Hassan. It shall be open to the Principal Judge, Family Court, Hassan, to assign the transferred case to an appropriate Court; iii. Both the parties shall appear before the Principal Judge, Family Court, Hassan on 4.3.2024 without the AIR ONLINE 2022 SC 1268 NC: 2024:KHC:4598 requirement of any further notice being issued in this regard;

iv. Consequent to transfer, the transferee Court shall conduct further proceedings in accordance with law; v. All contentions of the parties are left open.

Sd/-

JUDGE nd

Shivanand And Ors vs Sunita And Anr on 2 February, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:1237
CRL.P No. 201320 of 2019

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 2 ND DAY OF FEBRUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.201320 OF 2019 (482)

BETWEEN:

1. SHIVANAND S/O BABURAO @ KALLAPPA MADIVAL,
AGED ABOUT: 31 YEARS, OCC: AGRICULTURE,
R/O ALIAMBER, TQ. & DIST. BIDAR.
2. SHARDABAI W/O BABURAO @ KALLAPPA MADIVAL
AGED ABOUT 50 YEARS, OCC: AGRICULTURE,
R/O ALIAMBER, TQ. & DIST. BIDAR.
3. SUREKHA @ RADHIKA
W/O SACHIN
(D/O BABURAO @ KALLAPPA MADIVAL),
AGED ABOUT 26 YEARS, OCC: HOUSEHOLD,
R/O ALIAMBER VILLAGE, TQ. SIRGUPPA,
DIST. BELLARY, NOW AT ALIAMBER,
TQ. & DIST. BIDAR.
4. DHANRAJ S/O SHARNAPPA MADIVAL
AGED ABOUT 45 YEARS, OCC: AGRICULTURE,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.
5. NAGAMMA W/O DHANRAJ MADIVAL

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

AGED ABOUT 26 YEARS, OCC: HOUSEHOLD,
R/O ALIAMBER VILLAGE, TQ. SIRGUPPA,
DIST. BELLARY, NOW AT ALIAMBER,

TQ. & DIST. BIDAR.

AGED ABOUT 42 YEARS, OCC: HOUSEHOLD,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.

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NC: 2024:KHC-K:1237
CRL.P No. 201320 of 2019

6. DAYANAND S/O DHANRAJ MADIVAL
AGED ABOUT 22 YEARS, OCC: AGRICULTURE,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.
7. RUKMINIBAI W/O LATE RAMESH MADIVAL
AGED ABOUT 41 YEARS, OCC: HOUSEHOLD,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.
8. SAVITA W/O LATE OMKAR MADIVAL
AGED ABOUT 40 YEARS, OCC: HOUSEHOLD,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.
9. ADITYA S/O LATE OMKAR MADIVAL
AGED ABOUT 19 YEARS, OCC: AGRICULTURE,
R/O ALIAMBER VILLAGE,
TQ. & DIST. BIDAR.

...PETITIONERS

(BY SRI RAVI B. PATIL, ADVOCATE)

AND:

1. SUNITA
W/O SHIVANAND MADIVAL
(D/O VIJAYAKUMAR),
AGE: 26 YEARS, OCC: HOUSEHOLD,
R/O VILLAGE ALIAMBER,
TQ: & DIST: BIDAR,
NOW RESIDING AT VILLAGE HALBARGA,
TQ. BHALKI, DIST. BIDAR-585328.
2. ASHWIK
S/O SHIVANAND MADIVAL
AGE: 05 YEARS, OCC: STUDENT, U/G HIS REAL
MOTHER, SUNITA W/O SHIVANAND MADIVAL,
(D/O VIJAYAKUMAR),
AGE: 26 YEARS, OCC: HOUSEHOLD,
R/O VILLAGE ALIAMBER,
TQ & DIST: BIDAR,

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NOW RESIDING AT VILLAGE HALBARGA,
TQ. BHALKI, DIST. BIDAR-585328.

... RESPONDENTS

(BY SRI SANJAY A. PATIL, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
SET ASIDE THE IMPUGNED NOTICE AS AT ANNEXURE-D1 TO
D7 ISSUED IN CRL.MISC.NO.334/2019 AS AGAINST THE
PETITIONERS ISSUED BY THE COURT OF THE CIVIL JUDGE
(JR.DN.) AND JMFC, BHALKI AND PASS ANY SUCH OTHER
ORDER AS THIS SUCH ORDER AS THIS COURT DEEMS FIT.

THIS PETITION COMING ON FOR FINAL HEARING, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioners challenging issuance of notice under Annexures-D to D7, wherein, the petitioners were directed to appear before the Civil Judge (Jr.Dn.) and JMFC, Bhalki in Crl.Misc.No.334/2019 in respect of a petition filed by the respondents herein under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D. V. Act').

2. At the outset, it is evident that no specific order was passed and only show-cause notice came to be issued against the petitioners for their appearance. Apart from that, under Section 29 of the D. V. Act, the orders passed NC: 2024:KHC-K:1237 by the learned Magistrate under the provisions of the D. V. Act are appealable But, in the instant case, this petition is filed under Section 482 of Cr.P.C. for quashing issuance of notice. Only notice came to be issued without passing any specific orders, which would affect the rights of petitioners herein.

3. Hence, the petition itself is premature and further, in view of the bar under Section 29 of the D. V. Act, the petition itself is not maintainable. Accordingly, the petition stands dismissed.

Sd/-

JUDGE SRT

Chandrappa vs Smt. Shylaja on 31 January, 2024

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CRL.RP No. 177 of 2019

NC: 2024:KHC:4252

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION NO.177 OF 2019

BETWEEN:

CHANDRAPPA
S/O BASAVANTHAPPA,
AGED ABOUT 44 YEARS,
R/O MORARJI DESAI SCHOOL,
JAVAGATTI, SHIKARIPURA TALUK
PIN CODE - 577 427

...PETITIONER

(BY SRI. R GOPAL, ADVOCATE)

AND:

SMT. SHYLAJA
W/O BOJARAJA
R/O CHITHRATTI HALLI,
SORABA TALUK
SHIVAMOGGA DISTRICT
PIN CODE - 577 429

...RESPONDENT

Digitally signed

by REKHA R

Location: High

(BY SMT. VIJAYA M N, ADVOCATE)

Court of

Karnataka

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO ALLOW THE REVISION PETITION AND SET ASIDE THE JUDGMENT AND ORDER DATED 30.11.2018 PASSED BY THE COURT OF V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, SITTING AT SAGAR IN CRL.A.NO.6/2017 AND ALSO THE JUDGMENT AND ORDER DATED 03.06.2010 PASSED BY THE COURT OF CIVIL JUDGE (JR.DN.) AND J.M.F.C., SORABA IN CRL.MISC.NO.110/2009, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER ON MAIN PETITION
&
ORDER ON I A 1 Of 2023

In this petition filed under Section 397 r/w 401 of Cr.P.C, respondent No.5 before the trial Court has challenged the order passed by the trial Court, partly allowing the petition filed by petitioner before the trial Court granting restraining order and also maintenance at the rate of Rs.500/- p.m. to her daughter till further orders, which came to be confirmed by the Sessions Court by dismissing the appeal filed by him.

2. For the sake of convenience, the parties are referred to by their rank before the trial Court.

3. Petitioner filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 seeking several relief including protection order and maintenance. It is the case of the petitioner that she is the wife of first son of respondent No.1 and they are having a daughter who was aged seven years at the time of filing of

petition. After the death of his first wife, respondent No.1

married respondent No.2 as his second wife. Respondent Nos.3 to 5 are their children. Petitioner and her daughter are living in a portion of the family house of respondents. Petitioner's husband Bhojraj is staying in Bengaluru. Petitioner has alleged that in the above circumstances, respondents are trying to oust petitioner and her daughter from the house and they are also causing domestic violence demanding dowry and not providing from out of the joint family income.

4. Respondents admit the relationship between the parties. However, they have denied that they have caused any domestic violence against the petitioner and demanded dowry. The marriage between petitioner and her husband Bhojraj was a love marriage and after the marriage they were staying separately at Soraba. Bhojraj was a Civil Contractor and he incurred several debts, caused trouble to the respondents also and to evade the lenders, he was staying in Bengaluru. It is the

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CRL.RP No. 177 of 2019
NC: 2024:KHC:4252

responsibility of Bhojraj to maintain his wife and daughter. Petitioner and her daughter are living in a portion of the family house measuring 2 Ankana. However, respondents are not under an obligation to give her entire portion of

the house as there are other members of the family to be taken care of. To harass and trouble respondents, petitioner is in the habit of giving false complaints and sought for dismissal of the petition.

5. During the pendency the petition, the CDPO has submitted counseling report as provided under Section 14 of the DV Act.

6. The trial Court has held enquiry wherein petitioner is examined as PW-1. She has not produced any documents in support of her claim.

7. On the other hand, respondent No.1 is examined as DW-1. No documents are marked on behalf of the respondents.

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NC: 2024:KHC:4252

8. Vide the impugned order, the trial Court partly allowed the petition and issued order restraining respondent from causing any domestic violence and interfering with peaceful possession and enjoyment of petitioner over portion of the house. It has also directed respondents to pay Rs.500/- p.m. as maintenance to the daughter of the petitioner.

9. Aggrieved by the same, respondent No.5 approached the Sessions Court in Crl.A.No.6/2017. However, vide the impugned judgment and order dated 30.11.2018, the Sessions Court dismissed the appeal.

10. Aggrieved by the order passed by the trial Court as well as Sessions Court, respondent No.5 has filed this petition, contending that both Courts have committed serious error in holding that respondents have committed domestic violence solely, on the basis of self-serving statement of petitioner and report of CDPO. Respondent

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CRL.RP No. 177 of 2019

NC: 2024:KHC:4252

No.5 is a Government employee working as a teacher in Morarji Desai School at Javagatti Shikaripur Taluk and staying there. He is not living in the shared household.

11. The husband of the petitioner is earning and it is his responsibility to take care of his wife and daughter. He is the one who has set up the petitioner to file this false petition. In the circumstances, the trial Court has erred in granting maintenance against respondent No.5. Before the Sessions Court, respondent No.5 filed application to implead the husband of petitioner as additional party. He also filed additional documents. Without passing any

Chandrappa vs Smt. Shylaja on 31 January, 2024

orders on the said application, the Sessions Court has dismissed the appeal filed by the respondent No.5. In fact, the husband of petitioner has also filed a suit seeking petition. In the above facts and circumstances the impugned judgment and order of the trial Court and Sessions Court are liable to be set aside and hence the petition.

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NC: 2024:KHC:4252

12. Along with the main petition, the respondent No.5 has filed I.A.No.1/2023 seeking permission to produce the following additional documents, viz:

- (i) Notarized Copy of Plaintiff filed in O.S.No.5/2017 before Civil Judge (Sr.Dn.), Sorab.
- (ii) Notarized copy of Gift Deed dated 30.10.2014.
- (iii) Notarized copy of 11 'E' sketch of Sy.No.73/3.
- (iv) Notarized copy of RTC in respect of Sy.No.73/4

13. Heard arguments of both sides and perused the record.

14. The relationship between the parties is not in dispute. Petitioner is the wife of Bhojraj the son of respondent No.1 through his first wife. After her death, he married respondent No.2. Respondent Nos.3 to 5 and one Sujatha are the children of respondent Nos.1 and 2. Admittedly, the petitioner has not arraigned her husband

Bhojraj as party to the petition. Though there are no allegations of domestic violence against her husband, so far as her claim for maintenance is concerned, he ought to have been arraigned as respondent. No reasons are

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NC: 2024:KHC:4252

assigned in the petition for not arraigning her husband as a party.

15. During the course of arguments, learned counsel for petitioner submitted that the respondents has put the burden of repaying the loan in entirety on the husband of the petitioner and therefore he is absconding and his whereabouts are not known. However, during the course of the petition, it is stated that the husband of the petitioner is staying in Bangalore and doing private work. In fact, the respondents have pleaded that the husband of petitioner Bhojraj has incurred several debts, and when he failed to repay the same, he has absconded. In the report submitted by the CDPO also, it is stated that the husband of the petitioner Bhojraj was earlier doing contract work at Soraba and now he is temporarily working at Bengaluru. Therefore, the claim of the petitioner that respondents are liable to maintain her is not correct. Consequently, the trial Court as well as the Session Court have erred in

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granting maintenance at the rate of Rs.500/- p.m to the daughter of the petitioner.

16. Before the Session Court respondent No.5 has filed I.A.No.2 under Order 1 Rule 10 CPC, to implead the husband of petitioner namely Bhojraj as additional respondent. Along with the said application, he has also filed documents viz, Salary certificate of the Bhojraj, plaint in O.S.No.136/2014 filed by Sujata the daughter of respondents 1 and 2 and written statement filed in O.S.No.136/2014 by Bhojraj. Though in the file of Crl.A.No.6/2017, the documents produced by respondent No.5 are forthcoming, the application filed by him i.e., I.A.No.2 is not forthcoming. The Sessions Court has not passed any orders on the application. It ought to have passed necessary orders on the said application and thereafter proceeded to dispose of the appeal. It appears the said application is misplaced and therefore conveniently the Session Court has chosen not to refer to it. In fact before this Court, learned counsel for respondent

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No.5 has produced copy of I.A.2 filed under Order 1 Rule

10 C.P.C, before the Sessions Court along with list of the documents filed with that application.

17. Now respondent No.5 has filed I.A.No.2 to permit him to produce additional documents. The documents produced along with the application clearly indicate that Bhojraj, the husband of petitioner has filed suit in O.S.No.5/2017 seeking partition and separate possession of half share in the suit properties. The elder brother of respondent No.1 by name Gangappa has gifted 1 acre 9 guntas wet land standing in his name in favour of the petitioner. 11 'E' sketch and RTC also indicate that the said property is now standing in the name of petitioner. In addition to her husband being earning and being responsible for maintaining the petitioner and their daughter, the documents produced by the respondent No.5 also indicate that petitioner is owning 1 acre 9 guntas of wet land.

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18. The documents produced at the Sessions Court also reveal that Sujatha the daughter of respondent Nos.1 and 2 has filed O.S.No.136/2014, seeking partition wherein Bhojraj, the husband of petitioner has filed written statement denying the very relationship between

Chandrappa vs Smt. Shylaja on 31 January, 2024

respondent No.2 and her children born through respondent No.1. Having regard to these aspects, this Court is of the considered opinion that both the trial Court and Sessions Court have erred in directing respondents to pay maintenance at the rate of Rs.500/- to the daughter of petitioner and Bhojraj. It is the responsibility of Bhojraj to take care of his wife and daughter.

19. Since the petitioner is staying in portion of the shared household, the order restraining respondents from ousting the petitioner from the shared household is not liable to be interfered with till the suit for partition is decided by the trial Court. It is submitted by the learned counsel for respondent No.5 who is petitioner herein that already a sum of Rs.32,000/- and odd is paid by

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CRL.RP No. 177 of 2019
NC: 2024:KHC:4252

respondent No.5 to the daughter of the petitioner. If that is the case, he is at liberty to recover back the said amount or get it adjusted out of the amount if any payable out of the joint family income, if any. Without considering the oral and documentary evidence placed on record in the right perspective, both the trial Court and Sessions Court have erred in granting maintenance in favour of the daughter of petitioner. To that extent, the impugned order passed by the trial Court and Session Court are liable to be

Chandrappa vs Smt. Shylaja on 31 January, 2024
set aside and accordingly the following:

ORDER

& 401 Cr.P.C is allowed.

(ii) Petition filed by the petitioner herein who is respondent No.5 before the trial Court under Section 397 r/w 401 Cr.P.C is partly allowed.

(iii) The impugned order dated 03.06.2010 in C.Misc.No.110/2009 on the file of Civil Judge (Jr.Dn) and JMFC, Sorab, so far as

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NC: 2024:KHC:4252 granting maintenance at the rate of Rs.500/- p.m. in favour of daughter of the petitioner, which is confirmed by the Sessions Court by judgment and order dated 30.11.2018 in Crl.A.No.6/2017 on the file of V Addl.District and Sessions Judge, Shivamogga, sitting at Sagar is set aside.

(iv) Respondent No.5 is at liberty to recover back the amount if any, paid as per the said order.

(v) The Registry is directed to send back the trial Court and Sessions Court records along with copy of this order forthwith.

Sd/-

JUDGE RR

Ms. Rakhee Awat Lalvani vs Smt. Kanica Malhotra on 29 January, 2024

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.35569 OF 2019 (GM-RES)

BETWEEN:

1. MS. RAKHEE AWAT LALVANI
SISTER OF SHRI RAVI A LALVANI
SISTER-IN-LAW OF KANICA MALHOTRA
DAUGHTER OF LATE SHRI A.M.LALVANI
AGED ABOUT 47 YEARS,
RESIDING AT NO.5B, ROCKSIDE,
WALKESHWAR, OPPOSITE TO AFGHANISTAN
CONSULATE OFFICE, MALABAR HILLS
MUMBAI-400 006

2. SMT. SAROJINI LAVANI
MOTHER OF SHRI RAVI A LALVANI
MOTHER-IN-LAW OF KANICA MALHOTRA
WIFE OF LATE SHRI A M LALVANI
AGED ABOUT 84 YEARS,
RESIDING AT 5B, ROCKSIDE,
WALKESHWAR
OPPOSITE TO AFGHANISTAN CONSULATE OFFICE
MALABAR HILLS, MUMBAI-400 006
SENIOR CITIZEN NOT CLAIMED

...PETITIONERS

(BY SRI.AJESH KUMAR S, ADVOCATE)

2

AND:

1. SMT. KANICA MALHOTRA
WIFE OF SRHI RAVI M LALVANI
AGED ABOUT 45 YEARS

2. MASTER ARYMAN LALVANI

SON OF SMT. KANICA MALHOTRA & RAVI LALVANI
AGED ABOUT 8 YEARS

3. KUMARI KAIRA LALVANI
DAUGHTER OF SMT KANICA MALHOTRA
& RAVI LALVANI
AGED ABOUT 6 YEARS
SINCE RESPONDENTS 2 AND 3 ARE MINORS,
THEY ARE REPRESENTED BY THEIR MOTHER
RESPONDENT NO.1

1 TO 3 ARE RESIDING AT NO.1002 C
VASWANI PINNACLE, WHITE FILED MAIN ROAD,
BENGALURU-560 066

4. RAVI A. LALVANI
HUSBAND OF SMT. KANICA MALHOTRA
SON OF LATE SHRI A.M LALVANI
AGED ABOUT 56 YEARS,
RESIDING AT FLAT NO. 1002 C
VASWANI PINNACLE, WHITE FIELD MAIN ROAD,
BENGALURU-560 066
PRESENTLY AT
NO.5B, ROCKSIDE, WALKESHWAR
OPPOSITE TO AFGHANISTAN CONSULATE OFFICE
MALABAR HILLS, MUMBAI-400 006

... RESPONDENTS

(BY SRI S.R.SIDDARTHA, ADVOCATE FOR R1;
R4 SERVED & UNREPRESENTED (R2 & 3 ARE MINORS))

3

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C.
PRAYING TO QUASH THE ORDER DATED 13.02.2019 OF THE I ADDL. CHIEF JUDICIAL MAGISTRATE, RURAL COURT, BENGALURU ISSUING NOTICE TO THE PETITIONERS IN CRIMINAL MISCELLANEOUS NO.102/2019 AND COMMENCING PROCEEDINGS U/S 12 R/W 18, 19(f), 20 AND 23 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AS PER ANNEXURE-A AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.01.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed by the petitioners who are respondent Nos.2 and 3 in Crl.Misc.No.102/2019 and sister-in- law and mother-in-law respectively of respondent No.1 herein

seeking quashing of the proceedings pending in Crl.Misc.No.102/2019 for the offences punishable under Section 12 read with Sections 18, 19(f), 20 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act').

2. The respondent No.1 who is the daughter-in-law of petitioner No.2 has filed Crl.Misc.No.102/2019 against her husband/respondent No.4 and against the petitioners alleging that the petitioners taking undue advantage of ill-health of husband of respondent No.1 have created documents. The respondents have also alleged that they have forcibly taken respondent No.4/husband to Mumbai under the garb of treatment, just to cause mental cruelty to the respondents and to grab the properties of respondent No.4 by illegal means. It is also alleged that in the month of November 2018 under the garb of providing treatment to respondent No.4/husband, the petitioners have siphoned the money lying in the Bank. It is also alleged in the petition filed by the respondents that petitioners herein issued legal notice for having admitted respondent No.4/husband in Bhaita Hospital and called upon respondent No.1/wife to pay expenses to the tune of Rs.10,00,000/- On these set of allegations, petition came to be filed.

3. Learned counsel for the petitioners reiterating the grounds urged in the petition would vehemently argue and contend that the offences indicated in the petition filed in Crl.Misc.No.102/2019 are not at all attracted. He would point out that petitioner No.1 was transferred to Mumbai by her company and since then, petitioner No.2 lives in Mumbai, while respondents are residents of Bengaluru which is clearly evident from the cause title of the petition filed in Crl.Misc.No.102/2019. Referring to para 13 of the petition filed in Crl.Misc.No.102/2019, he would further point out that respondent No.4 who is the husband of respondent No.1 was shifted to Mumbai for further treatment as he was diagnosed with rare brain cancer. Referring to these significant details, he would further bring to the notice of this Court that respondent No.4 is no more and he died on account of cancer and therefore, he would contend that the allegations made in the petition are totally false, frivolous and the same is filed to extract money from the present petitioners herein. He would further point out that all medical expenses is borne by the petitioners and respondent No.1/wife has been thoroughly negligent and irresponsible and has not taken any steps to take care of respondent No.4/husband.

4. Placing reliance on the judgment rendered in the case of Shyamlal Devda and Others vs. Parimala¹, he would contend that respondents/complainant being residents of Bengaluru cannot maintain a petition under the provisions of Section 27 of the Act. He has also placed reliance on unreported judgment rendered by the coordinate Bench in the case of Smt. Radhabai & Another vs. Smt. Anita². Referring to the said judgment, he would point out that except vague allegations and having regard to the fact that petitioners and respondents never shared common household could not have invoked Section 12 of the Act.

5. Per contra, learned counsel appearing for the respondents would however point out that serious allegations are made in the petition and therefore, the petition cannot be (2020) 3 SCC 14 Crl.P.No.101305/2019 Dtd: 14.11.2022 dismissed at threshold and such recourse is not permissible under Section 482. He would further point out that there are specific averments of domestic violence and the material placed on record constitutes a prima facie case against the petitioners and

therefore, he would submit to this Court that this is not a fit case to quash the proceedings.

6. Heard learned counsel for the petitioners and learned counsel appearing for the respondents.

7. The case on hand requires consideration in two folds. Firstly, this Court needs to examine whether there are *prima facie* material to proceed against the petitioners. On reading the petition filed in Crl.Misc.No.102/2019, it is clearly evident that at para 7 of the petition, respondent No.1 has clearly admitted that petitioner No.1 along with petitioner No.2 shifted to Mumbai, as petitioner No.1 was transferred by her company. At para 7, there is a clear admission that petitioner Nos.1 and 2 shifted to Mumbai in March 2010. At para 17 of the petition, respondent No.1 has admitted that respondent No.4/husband was suffering from severe health issues and had advanced stage brain cancer and he had suffered a paralytic stroke on the right side and he was taking treatment as he was in the final stage for over a period of five years. There is one more unequivocal admission in para 17 wherein respondent No.1 admits that her husband/respondent No.4 was bedridden and was not even in a position to speak.

8. If these significant details are taken into consideration, this Court is more than satisfied that respondent Nos.1 to 3 who are wife and children of respondent No.4/husband never shared household with respondent No.4 post November, 2018. This petition is filed in 2019. On reading the averments, it is clearly evident that present petitioners shifted to Mumbai in 2010 and therefore, they never shared common household with respondent Nos.1 to 3. The respondent No.1/wife has admitted in unequivocal terms that her husband/respondent No.4 was bedridden for five years and he was suffering from advanced stage brain cancer and that led to paralytic stroke on the right side and he was not in a position to speak. These admitted facts are found to be disturbing. The respondent No.1/wife who left her husband at the hands of the petitioners who are sister and mother of respondent No.4 has come up with frivolous petition alleging domestic violence. If respondent No.1/wife was residing along with respondent No.4/husband in Bengaluru and he was diagnosed for cancer in 2014, has failed to place on record *prima facie* material to demonstrate that she is an aggrieved woman who is in a domestic relationship with her in-laws.

9. Therefore, on reading the averments made in the petition, this Court is of the view that there is absolutely no *prima facie* material to proceed against the petitioners. The acts of alleged domestic violence cannot be believed as respondents are permanent residents of Bengaluru and petitioner No.1 along with her mother i.e., petitioner No.2 had shifted to Mumbai way back in 2010.

10. On examining the records, this Court is of the view that respondent No.1/wife has not placed any material to substantiate and prove the incidence of domestic violence. In scrutinizing the circumstances surrounding the present case on hand, it becomes evident that respondent No.1/wife's invocation of domestic violence act appears to lack substantive foundation as petitioner Nos.1 and 2 vehemently contest any shared domestic relationship and in the process have emphasised their physical separation since 2010 and this vital aspect is admitted by respondent Nos.1 to 3 at paras 14, 17 and 19 of the petition filed in Crl.Misc.No.102/2019.

11. The respondents allegations, spanning a spectrum of abuses, are noticeably broad and lack the requisite specificity, particularly concerning the petitioners in question. Notably, petitioner Nos.1 and 2 are justified in claiming that respondent No.1/wife has not pointed out any instances of misconduct or violence directed specifically at them. This raises concern about the misuse of legal provisions designed to safeguard women from domestic violence.

12. The facts on hand do not align with the legislative intent and all the requisite ingredients which *prima facie* constitute an offence is not made out. The Courts must be extremely cautious and careful to ensure that their powers are not being abused. One of the important steps to be taken towards that direction is to scrutinize the petition meticulously and satisfy that a case of domestic violence as defined under the Domestic Violence Act is made out against the petitioners. This is not a fit case to proceed against the petitioners bearing in mind that respondent No.4 who is no more was suffering from brain cancer and petitioner Nos.1 and 2 have taken care by providing treatment at Mumbai. These facts are admitted by the respondent No.1/wife in the petition.

13. The second ground on which the petition is liable to be quashed can be gathered from the allegations made in the petition. On reading paragraphs 14, 17 and 19, it can be easily gathered that respondents, in all probability, have a property dispute. These paragraphs clearly given an indication that the dispute between petitioners and respondent Nos.1 to 3 is purely civil in nature. The respondents who are consciously aware of the fact that dispute is of civil nature have filed a petition alleging domestic violence at the hands of the petitioners. Therefore, even on this count, Cri.Misc. No.102/2019 filed for the offences punishable under Section 12 read with Sections 18, 19(f), 20 and 23 of the Protection of Women from Domestic Violence Act, 2005 are liable to be quashed.

14. For the reasons stated supra, I pass the following:

ORDER

(i) The writ petition is allowed;

(ii) The proceedings pending in Crl.Misc.No.102/2019 on the file of the I Additional Chief Judicial Magistrate, Rural Court, Bengaluru, for the offences punishable under Section 12 read with Sections 18, 19(f), 20 and 23 of the Protection of Women from Domestic Violence Act, 2005 are hereby quashed insofar as petitioners are concerned;

(iii) The pending interlocutory application, if any, does not survive for consideration and stands disposed of accordingly.

Sd/-

JUDGE CA

B Shalini vs M Prakash on 24 January, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:3420
RPFC No. 186 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS 24TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR
REV.PET FAMILY COURT NO. 186 OF 2019
BETWEEN:

1. B. SHALINI,
W/O M. PRAKASH,
AGED ABOUT 38 YEARS.
2. P. MAHADSEVAPRASAD,
S/O M. PRAKASH,
AGED ABOUT 17 YEARS.
3. P. MANIKYAM,
S/O M. PRAKASH,
AGED ABOUT 15 YEARS.
4. P. NAGASHRI,
D/O M. PRAKASH,
AGED ABOUT 11 YEARS.
5. P. NAGARJUNA,
S/O M. PRAKASH,
AGED ABOUT 11 YEARS.

Digitally signed by JAI
JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

THE PETITIONER NOS.2 TO 5 ARE MINORS,
THE PETITIONER NO.1,
BEING A MOTHER REPRESENTED
THEM AS A NATURAL GUARDIAN.

ALL ARE R/AT
D.NO.2368/2,

NEW KANTHARAJA URS ROAD,
JAYANAGARA,
MYSURU - 570 014.

...PETITIONERS

(BY SRI. THUSHANATH C.V., ADVOCATE)

AND:

M. PRAKASH,
S/O. LATE MAHADEVA,
AGED ABOUT 56 YEARS,
R/AT D.NO. 2368/2,
NEW KANTHARAJA URS ROAD,
JAYANAGARA,
MYSURU - 570 014.

...RESPONDENT

(BY SRI. UMASHANKARA S., ADVOCATE)

THIS RPFC IS FILED UNDER SECTION 19(4) OF FAMILY COURT ACT, AGAINST THE ORDER DATED 22.03.2019 PASSED IN CRL.MISC.173/2016 ON THE FILE OF THE III ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, MYSURU, PARTLY ALLOWING THE PETITION FILED UNDER SECTION 125 OF Cr.P.C FOR MAINTENANCE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed by the wife and four minor children calling in question the order rejecting the maintenance to the wife and granting meager amount of maintenance to the children in Crl.Mis.No.173/2016 dated NC: 2024:KHC:3420 22.03.2019 by the Court of III Additional Principal Family Judge at Mysuru.

2. The relationship between the petitioners and respondent is not disputed. The petitioner No.1 is wife of the respondent and petitioner Nos.2 to 5 are minor children of the respondent. On certain allegations of cruelty and ill-treatment, the petitioners are compelled to leave the respondent and started to reside separately. Thus, filed maintenance petition under Section 125 of Cr.P.C. and the Family Court has granted maintenance amount of Rs.1,000/- per month each to the respondent Nos.2 to 5 and rejected the petition filed by the petitioner No.1 - wife. Hence, the instant revision petition is filed by the petitioners praying to grant maintenance to the wife and for enhancement of maintenance to the children.

3. Heard the arguments of learned counsel for both the parties and perused the record.

4. The Family Court in a very strange manner without applying its common sense how to consider these NC: 2024:KHC:3420 types of petition has dealt the case resulting the petitioners to put into a worsen situation. The Family Court has erroneously observed that the petitioner No.1 being wife is able to maintain herself. Hence, dismissed the petition filed by the petitioner No.1 - wife. The Family Court has not considered the fact how the petitioner - wife is able to maintain herself and her children when they are thrown out to the street from the respondent - husband. The Family Court has referred to the provisions of Section 125 of Cr.P.C. and discussed Article 15 (3) of the Constitution of India but has failed to apprehend for what object and reason those provisions are made in the statute. The Family Court has recorded the findings as if petitioners have committed fault. Hence, the findings and the reasoning of the Family Court is completely erroneous, illegal, perverse and nonsense.

5. The petitioner No.1, being wife was thrown out from the respondent and she was constrained to live separately from the respondent with four minor children.

NC: 2024:KHC:3420 This fact and circumstance is not visualized from the Family Court. Unfortunately, the Family Court has lost its consciousness and had dealt the case in a casual and cavalier manner. The respondent - husband has not produced any evidence to prove that the petitioner No.1 is working and earning income to maintain herself, the Family Court has assumed that the petitioner No.1 - wife is capable of maintaining herself and on this ground, denied the maintenance to the wife. The Family Court has lost its wisdom, fairness, intelligence in considering the petition filed by the petitioners.

6. The Hon'ble Supreme Court has also held that it is duty cast on the husband and it is the legal and basic obligation on the part of the husband to maintain his wife and minor children. The Family Court is constrained to go through some of the decisions of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Rajnesh vs. Neha and another reported in AIR 2021 SC 569, has observed as under:-

NC: 2024:KHC:3420 "2. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on Maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into

destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that:

NC: 2024:KHC:3420 "Nothing in this article shall prevent the State from making any special provision for women and children."

5. Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

6. Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors¹. held that the object of maintenance laws is:

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.

(1978) 4 SCC 70(AIR 1978 SC 1807) NC: 2024:KHC:3420

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 ("SMA"), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

NC: 2024:KHC:3420 The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil

court/family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In *Bhagwan Dutt v Kamla Devi*(1975) 2 SCC 386: (AIR 1975 SC 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."

(emphasis supplied) Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and

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NC: 2024:KHC:3420 inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

In *Chaturbhuj v. Sitabai* (2008) 2 SCC 316:

(AIR 2008 SC 530) this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children,

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NC: 2024:KHC:3420 and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

Proceedings under Section 125 of the Cr.P.C. are summary in nature. In *Bhuwan Mohan Singh v Meena and Ors* (2015) 6 SCC 353: (AIR 2014 SC 2875). this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able -bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim u/S 125 Cr.P.C. came up for the consideration in *Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr.* (2011) 1 SCC 141: (2011 Cri LJ 96 (SC)) before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to

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NC: 2024:KHC:3420 maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife," to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for grant of maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125 Cr.P.C. such strict standard of proof is not necessary."

7. The Family Court by referring to Article 15 (3) of the Constitution of India about the object and reasoning to protect the interest and welfare of women and children

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NC: 2024:KHC:3420 but has failed to appreciate the case in what way present proceedings can be considered. The Family Court Judge has much discussed theory on the legal provisions with Article 15(3) of the Constitution of India, but practically failed to apply theory and application of mind into reality of life of destitute wife and children. Therefore, the Presiding Officer of the Family Court, who has delivered the impugned order needs training from the Karnataka Judicial Academy. Therefore, the Registrar General is directed to assign the Presiding Officer of the Family Court for training in family related matters making the Presiding Officer to sensitize to consider the

proceedings in true and correct perspective manner.

8. The respondent has not produced any evidence to prove that the petitioner No.1 - wife is earning and without any evidence, the Family Court by assuming itself that the petitioner No.1 is capable of maintaining herself has denied maintenance, which is not correct. It is legal and basic obligation on the part of the respondent - husband

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NC: 2024:KHC:3420 to maintain his wife and children and meet their needs to lead normal life. The petitioners are not seeking to live luxurious and lavish lifestyle but in order to bear minimum requirement to lead their life, they have filed petition. The petitioner No.1 has contended that the respondent is owner of the eight shops and is fetching rent from the same at Rs.20,000/- per month and the respondent is also a businessmen, which is not disputed by the respondent.

9. The petitioner No.1 being mother is looking after and nurturing the four minor children. The Family Court has granted meager maintenance amount of Rs.1,000/- per month each to the children, which also proves that the Presiding Officer of the Family Court has not comprehended the mental agony, hardship, sufferings, difficulties etc., being faced by the petitioners. Therefore, this is also one of the reasons as to why the Presiding Officer is liable to be assigned for training in Karnataka Judicial Academy.

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NC: 2024:KHC:3420

10. Considering the facts and circumstances of the case, applying theory of preponderance of probabilities while appreciating evidence on record and making guess work what would be the income of the respondent and in what way the wife and children are suffering, the case has to be decided quantifying the maintenance amount. Grant of maintenance amount shall be in such a way that the wife and children should not be compelled to live in miserable life and what would be the minimum amount that is required for sustaining themselves in the Society that much amount shall be awarded. The grant of maintenance by the husband to the wife and children is not for the charity purpose but it is responsibility, duty and obligation of the respondent - husband. Therefore, considering the facts that the respondent is owner of eight shops fetching rent and is a businessmen, petitioners who are wife and children of the respondent are entitled for enhancement of maintenance amount. Therefore, it is ordered that the petitioner No.1 - wife is entitled to maintenance amount of Rs.8,000/- per month payable by

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NC: 2024:KHC:3420 the respondent from the date of petition till her lifetime or till her re-marriage and petitioner Nos.2 to 5 are entitled to additional maintenance amount of Rs.4,000/- per month, in addition to what has been awarded by the Family Court till attaining the age of majority in case of

male children and till the marriage of the daughter in so far as petitioner No.4 is concerned.

11. The Registrar General is directed to assign the Presiding Officer of the Family Court, who passed the order for training at Karnataka Judicial Academy in Family Law and related matters. Hence, I proceed to pass the following:-

ORDER i. The petition is allowed-in-part.

ii. The order passed in Crl.Mis.No.173/2016 dated 22.03.2019 by the Court of III Additional Principal Family Judge at Mysuru is hereby modified to the extent that the petitioner No.1

- wife is entitled to maintenance amount of

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NC: 2024:KHC:3420 are entitled to additional maintenance of Rs.4,000/- per month, in addition to what has been awarded by the Family Court till attaining the age of majority in case of male children and till the marriage of the daughter in so far as petitioner No.4 is concerned.

iii. No order as to costs.

iv. The respondent shall pay entire arrears amount
as ordered and shall continue to pay

maintenance amount every month as ordered above.

v. The Registrar General is directed to assign the Presiding Officer of the Family Court, who passed the order for training at Karnataka Judicial Academy in Family Law and related matters.

Sd/-

JUDGE MH/-

CT:SNN

Smt.Meraj Begum And Anr vs Javeed Patel And Ors on 20 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

-1-

NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO.200071 OF 2017
(397)
C/W
CRIMINAL REVISION PETITION NO.200044 OF 2016
(397)

IN CRL.RP. NO. 200071 OF 2017

BETWEEN:

1. SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 25 YEARS, OCC: HOUSEHOLD.

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

2. ZEYAD PATEL, S/O JAVEED PATEL
AGED ABOUT 4 YEARS 7 MONTHS,
UNDER GUARDIANSHIP OF HIS NATURAL MOTHER,
SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 25 YEARS, OCC: HOUSEHOLD
BOTH R/O H.NO.18-1-127, DHABA GALLI,
CHIDRI, BIDAR-585401..

...PETITIONERS

(BY SRI RAVI B. PATIL, ADVOCATE)

AND:

1. JAVEED PATEL S/O MD. SHAIK PATEL,
AGED ABOUT 34 YEARS,
-2-

NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

OCC: VIDEO AND PHOTOGRAPHY

2. MD. SHAIK PATEL S/O MD. HUSSAIN PATEL
AGED ABOUT 68 YEARS,
OCC: EX.SERVICE MAN
3. AMZAD BE W/O MD. SHAIK PATEL
AGED ABOUT 64 YEARS,
OCC: HOUSE HOLD
4. IQBAL AHMED S/O MD. SHAIK PATEL
AGED ABOUT 28 YEARS,
OCC: PRIVATE SERVICE
5. FEROZ BEGUM D/O MD. SHAIK PATEL
(WIDOW) AGED ABOUT 36 YEARS, OCC:
HOUSEHOLD
6. RUBINA BEGUM D/O MD. SHAIK PATEL
AGED ABOUT 28 YEARS,
OCC: TAILORING
7. SHAHANAZ BEGUM D/O MD. SHAIK PATEL
AGED ABOUT 24 YEARS, OCC: STUDENT,
ALL RESIDENTS OF H.NO.18-3-204/1,
PLOT NO. 88, HAQ COLONY, CHIDRI ROAD,
BIDAR NOW RESIDING AT VILLAGE HANGARGA
TQ. OMERGA, DIST. OSMANABAD
(MAHARASHTRA STATE) -400001.

... RESPONDENTS

(BY SRI BASAVALING NASI, ADVOCATE FOR R1;
VIDE ORDER DATED 01.03.2018 NOTICE TO R2 TO R7 ARE
DISPENSED WITH)

THIS CRL.RP IS FILED U/S 397(1) R/W 401 OF CR.P.C
PRAYING TO ALLOW THE REVISION PETITION BY MODIFYING
THE ORDER PASSED BY THE 1ST APPELLATE COURT IN
CRL.A.NO.32/2015 THEREBY GRANTING THE RELIEF OF
PROTECTION, SEPARATE RESIDENCE AND ALSO THE DAMAGES
OF RS.2,00,000/- WITH THE COMPENSATION OF RS.1,00,000/-

NC: 2024:KHC-K:934

CRL.RP No. 200071 of 2017

C/W CRL.RP No. 200044 of 2016

IN CRL.RP NO. 200044 OF 2016.

BETWEEN:

JAVEED PATEL S/O. MD. SHAIK PATEL
AGED ABOUT 35 YEARS, OCC: VIDEO &
PHOTOGRAPHY,
R/O H.NO.18-3-204/1, PLOT NO.88,
HAQ COLONY, CHIDRI ROAD, BIDAR,
NOW RESIDING AT VILLAGE HANGARAGA,
TQ. OMERGA DIST. OSMANABAD(MAHARASHTRA)

...PETITIONER

(BY SRI BASAVALING NASI, ADVOCATE)

AND:

1. SMT. MERAJ BEGUM W/O JAVEED PATEL
AGED ABOUT 26 YEARS,
OCC: HOUSEHOLD

2. ZEYAD PATEL S/O JAVEED PATEL
AGED ABOUT 5 YEARS 07 MONTHS,
U/G OF HIS NATURAL MOTHER,
SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 26 YEARS
OCC:HOUSEHOLD,

BOTH R/O H.NO., 18-1-127, DHABA GALLI,
CHIDRI, BIDAR.

...RESPONDENTS

(BY SRI RAVI B. PATIL, ADVOCATE FOR R1 AND R2)

THIS CRL.RP IS FILED U/S 397 R/W SEC. 401 OF
CR.P.C PRAYING TO ALLOW THE REVISION PETITION AND SET
ASIDE THE ORDER DATED 10.03.2016 PASSED BY THE
PRINCIPAL SESSIONS JUDGE, BIDAR IN CRL.APPEAL
NO.32/2015 AND CONSEQUENTLY RESTORE THE ORDER
PASSED BY THE II ADDITIONAL CIVIL JUDGE AND JMFC,
BIDAR IN CRL.MISC.NO.665/2011.

-4-

NC: 2024:KHC-K:934

CRL.RP No. 200071 of 2017

C/W CRL.RP No. 200044 of 2016

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

These petitions are filed challenging the order passed by the Principal Sessions Judge, Bidar, in Crl.A.No.32/2015.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are that the petitioners have filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act') seeking reliefs under Sections 17, 18, 19, 20 & 22 and claimed maintenance of Rs.5,000/- per month along with compensation of Rs.2,00,000/-. The said petition was contested and subsequently, the learned Magistrate allowed the petition in part and awarded maintenance of Rs.500/- per month to the second petitioner till he attains the age of NC: 2024:KHC-K:934 majority. But the petition filed by petitioner No.1 was rejected.

4. This order was challenged by the petitioner before the Principal Sessions Judge in Crl.A.No.32/2015. The learned Sessions Judge after re-appreciating the evidence, allowed the appeal filed under Section 29 of the D.V. Act and directed the husband to pay maintenance of Rs.3,000/- per month to petitioner No.1/wife from the date of petition till her remarriage and he has further directed respondent to pay maintenance of Rs.2,000/- to petitioner No.2/minor child from the date of petition till attaining the age of majority.

5. Being aggrieved by this order, the husband has filed Crl.RP.No.200044/2016 challenging the order of the learned Sessions Judge in Crl.A.No.32/2015 and wife & minor child have filed Crl.RP.No.200071/2017 seeking enhancement.

6. Heard both the counsels and perused the records.

NC: 2024:KHC-K:934

7. During the course of the arguments, the learned counsel for revision petitioners in Crl.RP.No.200071/2017 filed a memo stating that petitioner No.1/wife was remarried on 02.10.2016 and hence, the claim against her was not pressed and she is entitled for maintenance till the date of remarriage and sought for dismissal of her petition. Accordingly, the revision petition filed by petitioner No.1/wife was dismissed.

8. The learned counsel for petitioner No.2/minor child would contend that maintenance of Rs.2,000/- is insufficient to minor as he is attending the school and it does not serve his requirement and sought for enhancement.

9. Per contra, the learned counsel for respondent/husband would contend that he is ready to take custody of the child and maintenance was enhanced exorbitantly and sought for allowing his revision by setting NC: 2024:KHC-K:934 aside the order in the appeal by restoring the order of the learned Magistrate.

10. Undisputedly, petitioner Nos.1 & 2 are the wife and child. It is evident from the records that both petitioner No.1 and respondent were subsequently remarried. The maintenance petition was filed in 2011 and though the claim of petitioner No.1 was rejected by the learned Magistrate, same was allowed in the appeal vide order dated 10.03.2016. However, it is evident that she was remarried on 02.10.2016 and hence, petitioner No.1/wife is entitled for maintenance till her remarriage only i.e., till 01.10.2016.

11. The contention of the respondent-husband is that he is prepared to take care of the child. But however, he is not taken any initiation in this regard and admittedly, child is in the custody of the wife/mother. He is not made any provision for maintenance and maintenance awarded to the tune of Rs.500/- by the learned Magistrate was too meager. Looking to the escalation in prices, the Sessions NC: 2024:KHC-K:934 Judge in the appeal has awarded Rs.2,000/- per month and considering the expenses of school fees, uniform and other requirements, it appears to be on lower side. Further, it is also evident that now petitioner No.1/wife is not entitled for maintenance in view of her re-marriage, and considering this aspect, in my considered opinion, maintenance of Rs.3000/- can be awarded to petitioner No.2 minor child.

12. At the same time, it is also relevant to note here that on 19.03.2018, this Court directed the respondent-husband to deposit arrears of maintenance to be paid to the minor child to the tune of Rs.1,50,000/- which was due till the date of filing of the petition on or before 02.04.2018. However, it is evident that no amount was deposited till today by the husband. This discloses the mentality of husband and is legally bound to maintain his child. Considering the conduct of the husband in not even obeying the direction of the Court, he does not deserve any leniency. Further considering the cost of the living, NC: 2024:KHC-K:934 maintenance needs to be enhanced and hence, the petition filed by the minor child in Crl.RP.No.200071/2017 needs to be allowed in part, while Crl.RP.No.200044/2016 filed by the husband needs to be rejected. Accordingly, I proceed to pass the following:

ORDER (I) Crl.RP.No.200071/2017 is allowed in part.

- (i) The claim of petitioner No.1 is dismissed as per memo dated 20.01.2024.
 - (ii) Petitioner No.2 in Cr.Misc.No.665/2011 is held entitled for maintenance for Rs.3,000/- per month from the date of petition till he attains the age of majority.
- (II) The revision petition filed by respondent/ husband in Crl.RP.200044/2016 stands dismissed.

Sd/-

JUDGE DS

Javeed Patel S/O. Md.Shaik Patel vs Smt.Meraj Begum W/O Javeed Patel And Anr on 20 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

-1-

NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO.200071 OF 2017
(397)
C/W
CRIMINAL REVISION PETITION NO.200044 OF 2016
(397)

IN CRL.RP. NO. 200071 OF 2017

BETWEEN:

1. SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 25 YEARS, OCC: HOUSEHOLD.

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

2. ZEYAD PATEL, S/O JAVEED PATEL
AGED ABOUT 4 YEARS 7 MONTHS,
UNDER GUARDIANSHIP OF HIS NATURAL MOTHER,
SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 25 YEARS, OCC: HOUSEHOLD
BOTH R/O H.NO.18-1-127, DHABA GALLI,
CHIDRI, BIDAR-585401..

...PETITIONERS

(BY SRI RAVI B. PATIL, ADVOCATE)

AND:

1. JAVEED PATEL S/O MD. SHAIK PATEL,
AGED ABOUT 34 YEARS,
-2-

NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

OCC: VIDEO AND PHOTOGRAPHY

2. MD. SHAIK PATEL S/O MD. HUSSAIN PATEL
AGED ABOUT 68 YEARS,
OCC: EX.SERVICE MAN
3. AMZAD BE W/O MD. SHAIK PATEL
AGED ABOUT 64 YEARS,
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4. IQBAL AHMED S/O MD. SHAIK PATEL
AGED ABOUT 28 YEARS,
OCC: PRIVATE SERVICE
5. FEROZ BEGUM D/O MD. SHAIK PATEL
(WIDOW) AGED ABOUT 36 YEARS, OCC:
HOUSEHOLD
6. RUBINA BEGUM D/O MD. SHAIK PATEL
AGED ABOUT 28 YEARS,
OCC: TAILORING
7. SHAHANAZ BEGUM D/O MD. SHAIK PATEL
AGED ABOUT 24 YEARS, OCC: STUDENT,
ALL RESIDENTS OF H.NO.18-3-204/1,
PLOT NO. 88, HAQ COLONY, CHIDRI ROAD,
BIDAR NOW RESIDING AT VILLAGE HANGARGA
TQ. OMERGA, DIST. OSMANABAD
(MAHARASHTRA STATE) -400001.

... RESPONDENTS

(BY SRI BASAVALING NASI, ADVOCATE FOR R1;
VIDE ORDER DATED 01.03.2018 NOTICE TO R2 TO R7 ARE
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THIS CRL.RP IS FILED U/S 397(1) R/W 401 OF CR.P.C
PRAYING TO ALLOW THE REVISION PETITION BY MODIFYING
THE ORDER PASSED BY THE 1ST APPELLATE COURT IN
CRL.A.NO.32/2015 THEREBY GRANTING THE RELIEF OF
PROTECTION, SEPARATE RESIDENCE AND ALSO THE DAMAGES
OF RS.2,00,000/- WITH THE COMPENSATION OF RS.1,00,000/-

NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

IN CRL.RP NO. 200044 OF 2016.

BETWEEN:

JAVEED PATEL S/O. MD. SHAIK PATEL
AGED ABOUT 35 YEARS, OCC: VIDEO &
PHOTOGRAPHY,
R/O H.NO.18-3-204/1, PLOT NO.88,
HAQ COLONY, CHIDRI ROAD, BIDAR,
NOW RESIDING AT VILLAGE HANGARAGA,
TQ. OMERGA DIST. OSMANABAD(MAHARASHTRA)

...PETITIONER

(BY SRI BASAVALING NASI, ADVOCATE)

AND:

1. SMT. MERAJ BEGUM W/O JAVEED PATEL
AGED ABOUT 26 YEARS,
OCC: HOUSEHOLD

2. ZEYAD PATEL S/O JAVEED PATEL
AGED ABOUT 5 YEARS 07 MONTHS,
U/G OF HIS NATURAL MOTHER,
SMT. MERAJ BEGUM W/O JAVEED PATEL,
AGED ABOUT 26 YEARS
OCC:HOUSEHOLD,

BOTH R/O H.NO., 18-1-127, DHABA GALLI,
CHIDRI, BIDAR.

...RESPONDENTS

(BY SRI RAVI B. PATIL, ADVOCATE FOR R1 AND R2)

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PRINCIPAL SESSIONS JUDGE, BIDAR IN CRL.APPEAL
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PASSED BY THE II ADDITIONAL CIVIL JUDGE AND JMFC,
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NC: 2024:KHC-K:934
CRL.RP No. 200071 of 2017
C/W CRL.RP No. 200044 of 2016

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

These petitions are filed challenging the order passed by the Principal Sessions Judge, Bidar, in Crl.A.No.32/2015.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are that the petitioners have filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act') seeking reliefs under Sections 17, 18, 19, 20 & 22 and claimed maintenance of Rs.5,000/- per month along with compensation of Rs.2,00,000/-. The said petition was contested and subsequently, the learned Magistrate allowed the petition in part and awarded maintenance of Rs.500/- per month to the second petitioner till he attains the age of NC: 2024:KHC-K:934 majority. But the petition filed by petitioner No.1 was rejected.

4. This order was challenged by the petitioner before the Principal Sessions Judge in Crl.A.No.32/2015. The learned Sessions Judge after re-appreciating the evidence, allowed the appeal filed under Section 29 of the D.V. Act and directed the husband to pay maintenance of Rs.3,000/- per month to petitioner No.1/wife from the date of petition till her remarriage and he has further directed respondent to pay maintenance of Rs.2,000/- to petitioner No.2/minor child from the date of petition till attaining the age of majority.

5. Being aggrieved by this order, the husband has filed Crl.RP.No.200044/2016 challenging the order of the learned Sessions Judge in Crl.A.No.32/2015 and wife & minor child have filed Crl.RP.No.200071/2017 seeking enhancement.

6. Heard both the counsels and perused the records.

NC: 2024:KHC-K:934

7. During the course of the arguments, the learned counsel for revision petitioners in Crl.RP.No.200071/2017 filed a memo stating that petitioner No.1/wife was remarried on 02.10.2016 and hence, the claim against her was not pressed and she is entitled for maintenance till the date of remarriage and sought for dismissal of her petition. Accordingly, the revision petition filed by petitioner No.1/wife was dismissed.

8. The learned counsel for petitioner No.2/minor child would contend that maintenance of Rs.2,000/- is insufficient to minor as he is attending the school and it does not serve his requirement and sought for enhancement.

9. Per contra, the learned counsel for respondent/husband would contend that he is ready to take custody of the child and maintenance was enhanced exorbitantly and sought for allowing his revision by setting NC: 2024:KHC-K:934 aside the order in the appeal by restoring the order of the learned Magistrate.

10. Undisputedly, petitioner Nos.1 & 2 are the wife and child. It is evident from the records that both petitioner No.1 and respondent were subsequently remarried. The maintenance petition was filed in 2011 and though the claim of petitioner No.1 was rejected by the learned Magistrate, same was allowed in the appeal vide order dated 10.03.2016. However, it is evident that she was remarried on 02.10.2016 and hence, petitioner No.1/wife is entitled for maintenance till her remarriage only i.e., till 01.10.2016.

11. The contention of the respondent-husband is that he is prepared to take care of the child. But however, he is not taken any initiation in this regard and admittedly, child is in the custody of the wife/mother. He is not made any provision for maintenance and maintenance awarded to the tune of Rs.500/- by the learned Magistrate was too meager. Looking to the escalation in prices, the Sessions NC: 2024:KHC-K:934 Judge in the appeal has awarded Rs.2,000/- per month and considering the expenses of school fees, uniform and other requirements, it appears to be on lower side. Further, it is also evident that now petitioner No.1/wife is not entitled for maintenance in view of her re-marriage, and considering this aspect, in my considered opinion, maintenance of Rs.3000/- can be awarded to petitioner No.2 minor child.

12. At the same time, it is also relevant to note here that on 19.03.2018, this Court directed the respondent-husband to deposit arrears of maintenance to be paid to the minor child to the tune of Rs.1,50,000/- which was due till the date of filing of the petition on or before 02.04.2018. However, it is evident that no amount was deposited till today by the husband. This discloses the mentality of husband and is legally bound to maintain his child. Considering the conduct of the husband in not even obeying the direction of the Court, he does not deserve any leniency. Further considering the cost of the living, NC: 2024:KHC-K:934 maintenance needs to be enhanced and hence, the petition filed by the minor child in Crl.RP.No.200071/2017 needs to be allowed in part, while Crl.RP.No.200044/2016 filed by the husband needs to be rejected. Accordingly, I proceed to pass the following:

ORDER (I) Crl.RP.No.200071/2017 is allowed in part.

- (i) The claim of petitioner No.1 is dismissed as per memo dated 20.01.2024.
 - (ii) Petitioner No.2 in Cr.Misc.No.665/2011 is held entitled for maintenance for Rs.3,000/- per month from the date of petition till he attains the age of majority.
- (II) The revision petition filed by respondent/ husband in Crl.RP.200044/2016 stands dismissed.

Sd/-

JUDGE DS

Sri K K Appaiah vs Smt. Teena Appaiah K on 20 January, 2024

1 CRL.RP NO.1270 OF 2021 c/w
 CRL.RP NO.1319 OF 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION NO.1270 OF 2021
C/W
CRIMINAL REVISION PETITION NO.1319 OF 2021

IN CRL.RP NO.1270 OF 2021

BETWEEN:

SMT. TEENA APPAIAH K.C.
W/O APPAIAH
AGED ABOUT 33 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
SOUTH KODAGU - 571 217

...PETITIONER

(BY SRI. HARISH M G, ADVOCATE)

AND:

SRI. K.K.APPAIAH
SON OF LATE KUTTAPPA
AGED ABOUT 36 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
SOUTH KODAGU - 571 217

.....RESPONDENT

(BY SRI. PRASANNA V R, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER
SECTION 397 AND 401 OF CODE OF CRIMINAL PROCEDURE
PRAYING TO SET ASIDE THE ORDER PASSED BY THE TRIAL
COURT IN CR.M.C.NO.331/2015 DATED 30.06.2018 PASSED
BY THE CIVIL JUDGE AND J.M.F.C., PONNAMPET AND ALSO
THE ORDER PASSED BY THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, KODAGU - MADIKERI SITTING AT
VIRAJPET IN CRL.A.NO.5033/2018 DATED 18.08.2021, BY

2 CRL.RP NO.1270 OF 2021 c/w
 CRL.RP NO.1319 OF 2021

CONFIRMING THE ORDER OF THE TRIAL COURT, IN THE
INTEREST OF JUSTICE.

IN CRL.RP NO.1319 OF 2021

BETWEEN:

SRI. K.K.APPAIAH
SON OF LATE KUTTAPPA
AGED ABOUT 39 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
KODAGU DISTRICT - 571 213

...PETITIONER

(BY SRI. SRINIVASA D C, ADVOCATE)

AND:

SMT. TEENA APPAIAH K
W/O APPAIAH
AGED ABOUT 35 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL, VIRAJPET TALUK
KODAGU DISTRICT - 571 213

....RESPONDENT

(BY SRI. HARISH GANAPATHI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 AND 401 OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE HON'BLE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU - MADIKERI SITTING AT VIRAJPET IN CRL.A.NO.5023/2018 DATED 18.08.2021 AND SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE HON'BLE CIVIL JUDGE AND JMFC, PONNAMPET, IN CR.M.C.NO.331/2015 DATED 30.06.2018 AND DISMISS THE PETITION OF THE RESPONDENT, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED ON 07.12.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

3

CRL.RP NO.1270 OF 2021 c/w
CRL.RP NO.1319 OF 2021

ORDER

These two petitions are arising out of the judgment and order dated 18.08.2021, in Crl.A.No.5033/2018, thereby confirming the order passed by the trial Court in

Crl.Misc.No.331/2015, granting various reliefs sought under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short).

2. For the sake of convenience, the parties are referred to by their rank before the trial Court.
3. Petitioner filed the petition in question under Section 12 of the DV Act against her husband i.e., respondent No.1 and others seeking various reliefs. It came to be allowed in part.
4. Respondent No.1 challenged the said order before the Sessions Court in Crl.A.No.5033/2018. However, the petitioner did not challenge the order of trial Court so far as the reliefs not granted by the trial Court. The Sessions Court dismissed the appeal filed by CRL.RP NO.1319 OF 2021 the respondent No.1 and thereby confirming the order passed by the trial Court.
5. Aggrieved by the same respondent No.1 has filed Crl.R.P.No.1319/2021, contending that the impugned judgment and order of the trial Court as well as the Appellate Court are opposed to facts and circumstances of the case. They have failed to appreciate the law on the point and passed erroneous order. They have not considered the law and settled principles governing award of monthly maintenance. Petitioner stayed with the respondent No.1 only for a period of three years and left his company voluntarily without any justifiable reasons. Petitioner is a highly qualified lady. Earlier she was working in IBM. She is having sufficient income to maintain herself. Respondent No.1 has sold all his properties way back in 2006 itself, i.e., much prior to his marriage. He is suffering from diabetes and high blood pressure. There is no basis for granting monthly maintenance, damages and compensation. Respondent No.1 is not in a position to pay monthly maintenance at CRL.RP NO.1319 OF 2021 the rate of Rs.15,000/- to the petitioner and hence the petition.
6. Petitioner/wife has filed the petition contending that the order of the trial Court so far as refusing to order for return of gold ornaments is concerned, is not sustainable and liable to be set aside. Based on the material placed on record, the trial Court ought to have granted the said relief. The respondent No.1 has not produced any documents to prove that the pledged jewels belong to his mother. In the light of the same, the impugned order is liable to be modified and pray to allow the petition filed by her.
7. Heard elaborate arguments of both sides and perused the record.
8. The relationship between the parties is not in dispute. The marriage between petitioner and respondent No.1 was solemnized on 05.02.2012 and after the marriage they lived as husband and wife at Athur village for three years along with remaining respondents. It is CRL.RP NO.1319 OF 2021 alleged by the petitioner that respondent No.1 is a coffee planter having valuable properties earning hand sum return. After three years, respondents started harassing the petitioner physically and mentally to get more dowry, not bearing children, suspecting her character and conduct and preventing her from taking up a job. She was deprived of food, clothing, etc. Respondent No.1 has sold/pledged her gold ornaments weighing 736 gms, as detailed in the petition, without informing her and without her consent. She filed a complaint against them on 16.03.2015 and in respect of the

same, NCR.No.15/2015 was registered. However, on 16.03.2015, respondents assaulted and removed her from the matrimonial home and therefore she is living with her parents. All the efforts made by family members, relatives, friends and well wishers to reunite them went in vain. With these allegations, she sought for various reliefs.

9. Respondents appeared before the trial Court. Respondent No.1 filed objections admitting the CRL.RP NO.1319 OF 2021 relationship, the fact that after marriage he and petitioner lived together as husband and wife for three years. However, he has denied the remaining averments. He has alleged that it is the petitioner who treated him with cruelty by refusing to perform her marital obligations. She used to unnecessarily quarrel with him and left the matrimonial home on her own. She has not returned despite repeated request . She has filed a false complaint on 16.03.2015. Petitioner is having coparcenary property getting sufficient income. She has made these allegations only to get the maintenance and other reliefs. The financial condition of respondent No.1 is very poor. He has filed petition under Section 13-A of Hindu Marriage Act in M.C.No.27/2015 on the file of Senior Civil Judge, Virajpet and it is pending. Petitioner wanted to lead a luxurious life and left the company of respondent No.1 on her own. She is not entitled for any of the reliefs and sought for dismissal of the petition.

CRL.RP NO.1319 OF 2021

10. In support of her case, petitioner has examined herself as PW-1, two witnesses as PWs-2 and 3 and relied upon Ex.P1 to 46.

11. Respondent No.1 has examined himself as RW-1 and relied upon Ex.R1.

12. Vide impugned order dated 30.06.2018, the trial Court partly allowed the petition granting maintenance at the rate of Rs.15,000/- p.m. with 5% yearly enhancement, cost of Rs.5,000/-, damages in a sum of Rs.2,00,000/- for misappropriation of 8 sovereign gold, compensation in a sum of Rs.5,00,000/- at the hands of respondent No.1. The trial Court has also restrained the respondents from committing any act of domestic violence against the petitioner.

13. It is pertinent to note that petitioner did not challenge this order passed by the trial Court.

14. However, respondent No.1 filed Crl.A.No.5033/2018 against the order passed by the trial CRL.RP NO.1319 OF 2021 Court, which came to be dismissed vide the impugned judgment and order dated 18.08.2021.

15. Thus, while respondent No.1 has challenged the order granting maintenance, damages for misappropriation of 8 sovereign gold belonging to petitioner, compensation and restraint order, the petitioner has challenged the order refusing to direct the respondent No.1 to return gold ornaments which are pledged/sold by him to PW-2 and 3.

16. So far as the grievance of the respondent No.1 is concerned, having regard to the fact that the relationship between the parties not in dispute and the petitioner and respondent No.1 are not living

together and it is established through evidence that petitioner is not able to maintain herself, it is obligatory on the part of respondent No.1 to maintain her. Respondents are owning properties as reflected in Ex.P4 to 16. Respondent No.1 has produced a partition deed at Ex.R1. From the contents of the document, it is evident that in lieu of his share in respect of valuable properties, he has CRL.RP NO.1319 OF 2021 taken only a paltry sum of Rs.15 lakhs to his share. It goes without saying that in order to prevent the petitioner from claiming any right over the property that may fall to the share of respondent No.1, the respondent No.1 appears to have brought this document into existence.

17. During the course of her evidence, the petitioner has deposed that respondent No.1 is getting income of Rs.60 to 70 lakhs p.a. This piece of evidence of petitioner is not disputed by the respondents, more particularly respondent No.1 has not come up with any specific figure regarding the income derived from the said properties. Taking to consideration the extent, nature of the lands owned by the respondents and the expected income that may be derived from the said properties and share of the respondent No.1, the trial Court has come to correct conclusion so far as the maintenance and other reliefs granted in favour of the petitioner. The Sessions Court also on re-appreciation of oral and documentary evidence has refused to interfere with the said findings.

CRL.RP NO.1319 OF 2021 This Court also find no justifiable grounds to interfere with the same.

18. So far as the petition filed by the petitioner is concerned, as rightly observed by the trial Court, except listing the ornaments, the petitioner has not come up with any pleadings or averments as to how she parted with possession of these ornaments and how they came into the hands of respondent No.1. For the first time in the synopsis to the petition, the petitioner has pleaded that during the time of happy married life, respondent No.1 took all the jewels from the custody of petitioner with the promise to keep in safety locker and misused them. Consequently, there is also no evidence as to what are all the ornaments which were pledged or sold by the respondent No.1. Only during the course of evidence she has produced receipts regarding pledging and sale of certain ornaments.

19. Though respondent No.1 has not disputed pledging/sale of certain ornaments, he has specifically claimed that they belong to his mother. As rightly CRL.RP NO.1319 OF 2021 observed by the trial Court, except Ex.P 21 to 25, the other jewellery bills doesn't contain the TIN Number and Serial number/Bill number and expressed doubt with regard to their authenticity. The other bills may prove the fact that through them petitioner has purchased certain ornaments. However, by itself it cannot be held that the said ornaments were given by petitioner to the respondent No.1 and he has pledged/sold them. The receipts produced by the petitioner is not sufficient to hold that the pledged/sold ornaments were purchased through the said receipts. Therefore, the trial Court has rightly refused to order for returning of the said ornaments.

20. However, since the respondent No.1 has admitted that he is yet to return 8 sovereign gold ornaments, the trial Court has rightly ordered for payment of value of the same and quantified it at Rs.2 lakhs. However, though the order is passed on 30.06.2018, the respondent No.1 has not yet paid the said amount. Having regard to the fact that the value of CRL.RP NO.1319 OF 2021 gold is increasing day by day, the respondent is required to pay the value of 8 sovereign of 22 carat gold as

on the date of payment. To this extent, the order is liable to be modified and accordingly the following:

ORDER

(i) Petition filed by the respondent No.1/husband i.e., Crl.RP.No.1319/2021, is dismissed.

(ii) The petition filed by the petitioner/wife i.e., Crl.RP.No.1270/2021, is allowed in part.

(iii) The impugned judgment and order of the trial Court is confirmed except with regard to payment of Rs.2 lakhs in respect of misappropriation of 8 sovereign of gold.

Instead of Rs.2 lakhs the respondent No.1 shall pay the actual value of 8 sovereign of 22 carat gold to the petitioner as on the date of payment. The remaining order is confirmed.

(iv) The Registry is directed to send back the trial Court and Sessions Court records along with copy of this order forthwith.

Sd/-

JUDGE RR

Smt.Teenaa Appaiah K.C vs Sri.K.K.Appaiah on 20 January, 2024

1 CRL.RP NO.1270 OF 2021 c/w
CRL.RP NO.1319 OF 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION NO.1270 OF 2021
C/W
CRIMINAL REVISION PETITION NO.1319 OF 2021

IN CRL.RP NO.1270 OF 2021

BETWEEN:

SMT. TEENA APPAIAH K.C.
W/O APPAIAH
AGED ABOUT 33 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
SOUTH KODAGU - 571 217

(BY SRI. HARISH M G, ADVOCATE)

... PETITIONER

(BY SRI. HARISH M G, ADVOCATE)

AND :

SRI. K.K.APPAIAH
SON OF LATE KUTTAPPA
AGED ABOUT 36 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
SOUTH KODAGU - 571 217

..... RESPONDENT

(BY SRI. PRASANNA V R, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 AND 401 OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE ORDER PASSED BY THE TRIAL COURT IN CR.M.C.NO.331/2015 DATED 30.06.2018 PASSED BY THE CIVIL JUDGE AND J.M.F.C., PONNAMPET AND ALSO THE ORDER PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU - MADIKERI SITTING AT VIRAJPET IN CRL.A.NO.5033/2018 DATED 18.08.2021. BY

2 CRL.RP NO.1270 OF 2021 c/w
CRL.RP NO.1319 OF 2021

CONFIRMING THE ORDER OF THE TRIAL COURT, IN THE
INTEREST OF JUSTICE.

IN CRL.RP NO.1319 OF 2021

BETWEEN:

SRI. K.K.APPAIAH
SON OF LATE KUTTAPPA
AGED ABOUT 39 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL
KODAGU DISTRICT - 571 213

...PETITIONER

(BY SRI. SRINIVASA D C, ADVOCATE)

AND:

SMT. TEENA APPAIAH K
W/O APPAIAH
AGED ABOUT 35 YEARS
RESIDENT OF ATHUR VILLAGE AND POST
GONIKOPPAL, VIRAJPET TALUK
KODAGU DISTRICT - 571 213

....RESPONDENT

(BY SRI. HARISH GANAPATHI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 AND 401 OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE HON'BLE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU - MADIKERI SITTING AT VIRAJPET IN CRL.A.NO.5023/2018 DATED 18.08.2021 AND SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE HON'BLE CIVIL JUDGE AND JMFC, PONNAMPET, IN CR.M.C.NO.331/2015 DATED 30.06.2018 AND DISMISS THE PETITION OF THE RESPONDENT, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED ON 07.12.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

3

CRL.RP NO.1270 OF 2021 c/w
CRL.RP NO.1319 OF 2021

ORDER

These two petitions are arising out of the judgment and order dated 18.08.2021, in Crl.A.No.5033/2018, thereby confirming the order passed by the trial Court in

Crl.Misc.No.331/2015, granting various reliefs sought under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short).

2. For the sake of convenience, the parties are referred to by their rank before the trial Court.
3. Petitioner filed the petition in question under Section 12 of the DV Act against her husband i.e., respondent No.1 and others seeking various reliefs. It came to be allowed in part.
4. Respondent No.1 challenged the said order before the Sessions Court in Crl.A.No.5033/2018. However, the petitioner did not challenge the order of trial Court so far as the reliefs not granted by the trial Court. The Sessions Court dismissed the appeal filed by CRL.RP NO.1319 OF 2021 the respondent No.1 and thereby confirming the order passed by the trial Court.
5. Aggrieved by the same respondent No.1 has filed Crl.R.P.No.1319/2021, contending that the impugned judgment and order of the trial Court as well as the Appellate Court are opposed to facts and circumstances of the case. They have failed to appreciate the law on the point and passed erroneous order. They have not considered the law and settled principles governing award of monthly maintenance. Petitioner stayed with the respondent No.1 only for a period of three years and left his company voluntarily without any justifiable reasons. Petitioner is a highly qualified lady. Earlier she was working in IBM. She is having sufficient income to maintain herself. Respondent No.1 has sold all his properties way back in 2006 itself, i.e., much prior to his marriage. He is suffering from diabetes and high blood pressure. There is no basis for granting monthly maintenance, damages and compensation. Respondent No.1 is not in a position to pay monthly maintenance at CRL.RP NO.1319 OF 2021 the rate of Rs.15,000/- to the petitioner and hence the petition.
6. Petitioner/wife has filed the petition contending that the order of the trial Court so far as refusing to order for return of gold ornaments is concerned, is not sustainable and liable to be set aside. Based on the material placed on record, the trial Court ought to have granted the said relief. The respondent No.1 has not produced any documents to prove that the pledged jewels belong to his mother. In the light of the same, the impugned order is liable to be modified and pray to allow the petition filed by her.
7. Heard elaborate arguments of both sides and perused the record.
8. The relationship between the parties is not in dispute. The marriage between petitioner and respondent No.1 was solemnized on 05.02.2012 and after the marriage they lived as husband and wife at Athur village for three years along with remaining respondents. It is CRL.RP NO.1319 OF 2021 alleged by the petitioner that respondent No.1 is a coffee planter having valuable properties earning hand sum return. After three years, respondents started harassing the petitioner physically and mentally to get more dowry, not bearing children, suspecting her character and conduct and preventing her from taking up a job. She was deprived of food, clothing, etc. Respondent No.1 has sold/pledged her gold ornaments weighing 736 gms, as detailed in the petition, without informing her and without her consent. She filed a complaint against them on 16.03.2015 and in respect of the

same, NCR.No.15/2015 was registered. However, on 16.03.2015, respondents assaulted and removed her from the matrimonial home and therefore she is living with her parents. All the efforts made by family members, relatives, friends and well wishers to reunite them went in vain. With these allegations, she sought for various reliefs.

9. Respondents appeared before the trial Court. Respondent No.1 filed objections admitting the CRL.RP NO.1319 OF 2021 relationship, the fact that after marriage he and petitioner lived together as husband and wife for three years. However, he has denied the remaining averments. He has alleged that it is the petitioner who treated him with cruelty by refusing to perform her marital obligations. She used to unnecessarily quarrel with him and left the matrimonial home on her own. She has not returned despite repeated request . She has filed a false complaint on 16.03.2015. Petitioner is having coparcenary property getting sufficient income. She has made these allegations only to get the maintenance and other reliefs. The financial condition of respondent No.1 is very poor. He has filed petition under Section 13-A of Hindu Marriage Act in M.C.No.27/2015 on the file of Senior Civil Judge, Virajpet and it is pending. Petitioner wanted to lead a luxurious life and left the company of respondent No.1 on her own. She is not entitled for any of the reliefs and sought for dismissal of the petition.

CRL.RP NO.1319 OF 2021

10. In support of her case, petitioner has examined herself as PW-1, two witnesses as PWs-2 and 3 and relied upon Ex.P1 to 46.

11. Respondent No.1 has examined himself as RW-1 and relied upon Ex.R1.

12. Vide impugned order dated 30.06.2018, the trial Court partly allowed the petition granting maintenance at the rate of Rs.15,000/- p.m. with 5% yearly enhancement, cost of Rs.5,000/-, damages in a sum of Rs.2,00,000/- for misappropriation of 8 sovereign gold, compensation in a sum of Rs.5,00,000/- at the hands of respondent No.1. The trial Court has also restrained the respondents from committing any act of domestic violence against the petitioner.

13. It is pertinent to note that petitioner did not challenge this order passed by the trial Court.

14. However, respondent No.1 filed Crl.A.No.5033/2018 against the order passed by the trial CRL.RP NO.1319 OF 2021 Court, which came to be dismissed vide the impugned judgment and order dated 18.08.2021.

15. Thus, while respondent No.1 has challenged the order granting maintenance, damages for misappropriation of 8 sovereign gold belonging to petitioner, compensation and restraint order, the petitioner has challenged the order refusing to direct the respondent No.1 to return gold ornaments which are pledged/sold by him to PW-2 and 3.

16. So far as the grievance of the respondent No.1 is concerned, having regard to the fact that the relationship between the parties not in dispute and the petitioner and respondent No.1 are not living

together and it is established through evidence that petitioner is not able to maintain herself, it is obligatory on the part of respondent No.1 to maintain her. Respondents are owning properties as reflected in Ex.P4 to 16. Respondent No.1 has produced a partition deed at Ex.R1. From the contents of the document, it is evident that in lieu of his share in respect of valuable properties, he has CRL.RP NO.1319 OF 2021 taken only a paltry sum of Rs.15 lakhs to his share. It goes without saying that in order to prevent the petitioner from claiming any right over the property that may fall to the share of respondent No.1, the respondent No.1 appears to have brought this document into existence.

17. During the course of her evidence, the petitioner has deposed that respondent No.1 is getting income of Rs.60 to 70 lakhs p.a. This piece of evidence of petitioner is not disputed by the respondents, more particularly respondent No.1 has not come up with any specific figure regarding the income derived from the said properties. Taking to consideration the extent, nature of the lands owned by the respondents and the expected income that may be derived from the said properties and share of the respondent No.1, the trial Court has come to correct conclusion so far as the maintenance and other reliefs granted in favour of the petitioner. The Sessions Court also on re-appreciation of oral and documentary evidence has refused to interfere with the said findings.

CRL.RP NO.1319 OF 2021 This Court also find no justifiable grounds to interfere with the same.

18. So far as the petition filed by the petitioner is concerned, as rightly observed by the trial Court, except listing the ornaments, the petitioner has not come up with any pleadings or averments as to how she parted with possession of these ornaments and how they came into the hands of respondent No.1. For the first time in the synopsis to the petition, the petitioner has pleaded that during the time of happy married life, respondent No.1 took all the jewels from the custody of petitioner with the promise to keep in safety locker and misused them. Consequently, there is also no evidence as to what are all the ornaments which were pledged or sold by the respondent No.1. Only during the course of evidence she has produced receipts regarding pledging and sale of certain ornaments.

19. Though respondent No.1 has not disputed pledging/sale of certain ornaments, he has specifically claimed that they belong to his mother. As rightly CRL.RP NO.1319 OF 2021 observed by the trial Court, except Ex.P 21 to 25, the other jewellery bills doesn't contain the TIN Number and Serial number/Bill number and expressed doubt with regard to their authenticity. The other bills may prove the fact that through them petitioner has purchased certain ornaments. However, by itself it cannot be held that the said ornaments were given by petitioner to the respondent No.1 and he has pledged/sold them. The receipts produced by the petitioner is not sufficient to hold that the pledged/sold ornaments were purchased through the said receipts. Therefore, the trial Court has rightly refused to order for returning of the said ornaments.

20. However, since the respondent No.1 has admitted that he is yet to return 8 sovereign gold ornaments, the trial Court has rightly ordered for payment of value of the same and quantified it at Rs.2 lakhs. However, though the order is passed on 30.06.2018, the respondent No.1 has not yet paid the said amount. Having regard to the fact that the value of CRL.RP NO.1319 OF 2021 gold is increasing day by day, the respondent is required to pay the value of 8 sovereign of 22 carat gold as

on the date of payment. To this extent, the order is liable to be modified and accordingly the following:

ORDER

(i) Petition filed by the respondent No.1/husband i.e., Crl.RP.No.1319/2021, is dismissed.

(ii) The petition filed by the petitioner/wife i.e., Crl.RP.No.1270/2021, is allowed in part.

(iii) The impugned judgment and order of the trial Court is confirmed except with regard to payment of Rs.2 lakhs in respect of misappropriation of 8 sovereign of gold.

Instead of Rs.2 lakhs the respondent No.1 shall pay the actual value of 8 sovereign of 22 carat gold to the petitioner as on the date of payment. The remaining order is confirmed.

(iv) The Registry is directed to send back the trial Court and Sessions Court records along with copy of this order forthwith.

Sd/-

JUDGE RR

Arzoo Samarth Jagnani vs Smarth Vimal Jagnani on 19 January, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

- 1 -

NC: 2024:KHC:2551
WP No. 21986 of 2023
C/W WP No. 26319 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE M. NAGAPRASANNA

WRIT PETITION NO. 21986 OF 2023 (GM-FC)

C/W

WRIT PETITION NO. 26319 OF 2023 (GM-FC)

IN W.P.No.21986/2023:

BETWEEN:

ARZOO SAMARTH JAGNANI
W/O SAMARTH VIMAL JAGNANI,
AGED ABOUT 37 YEARS,
R/AT C1-1502, L AND T SOUTH CITY,
AREKERE, MICO LAYOUT, BG ROAD,
BANGALORE - 560076

...PETITIONER

(BY SRI. SPOORTHY HEGDE N., DVOCATE)

AND:

SMAARTH VIMAL JAGNANI
S/O VIMAL JAGNANI,
AGED ABOUT 40 YEARS,
R/AT FLAT NO.302, BALAJI TOWERS,
JAISUKHLAL MEHTA ROAD, SANTACRUZ WEST,
MUMBAI - 400054

...RESPONDENT

(BY SRI. NEHAL THIMMIAH M.P., ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN MC NO.6470/2022 ON THE FILE OF THE 2ND ADDL. PRINCIPAL FAMILY JUDGE, BENGALURU; A) DIRECTION IN NATURE OF WRIT, MODIFYING BY ORDERING THE INTERIM MAINTENANCE AS PRAYED FOR IN THE APPLICATION THE ORDER DATED 08/09/2023 AT ANNEXURE-J PASSED BY THE LEARNED 2ND ADDL. PRINCIPAL FAMILY JUDGE, BENGALURU IN M.C. NO.6470/2022; B) BY ORDERING THE INTERIM MAINTENANCE BY CONSIDERING THE

-2-

NC: 2024:KHC:2551

WP No. 21986 of 2023

C/W WP No. 26319 of 2023

PRESENT INCOME AND ASSETS OF THE RESPONDENT AS PER THE GUIDELINES LAID DOWN BY THIS HONBLE COURTS AND THE HONBLE SUPREME COURT.

IN W.P.No.26319/2023:

BETWEEN:

MR. SAMARTH VIMAL JAGNANI
S/O VIMAL JAGNANI,
AGED ABOUT 40 YEARS,
OCC: SERVICE
R/AT: FLAT NO.302, BALAJI TOWERS,
JAISUKHLAL MEHTA ROAD, SANTACRUZ WEST,
MUMBAI - 400054

...PETITIONER

(BY SRI. NEHAL THIMMAIAH M.P., DVOCATE)

AND:

MRS. ARZOO SAMARTH JAGNANI
@ ARZOO RAMGOPAL JAJODIA
W/O SAMARTH JAGNANI,
AGED ABOUT 37 YEARS,
OCC: BUSINESS
R/AT: JAJODIA VILLA, MEGH MALHAR
COMPLEX, NEAR ROYAL CHALLENGE
RESTAURANT, OFF. GEN A.K. VAIDYA MARG
GOREGAON EAST
MUMBAI - 400 063

...RESPONDENT

(BY SRI. SPOORTHY HEGDE N., ADV. FOR C/R)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 08/09/2023 PASSED BY THE LEARNED 2ND ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU UPON THE APPLICATION UNDER

SECTION 125 OF CODE OF CRIMINAL PROCEDURE IN M.C.6470 OF
2022 VIDE (ANNEXURE-A).

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC:2551
WP No. 21986 of 2023
C/W WP No. 26319 of 2023

ORDER

These petitions are preferred by the husband and wife respectively. The husband prefers W.P.No.26319/2023 calling in question the order of grant of maintenance by the concerned Court. W.P.No.21986/2023 is preferred by the wife seeking enhancement of maintenance as ordered by the concerned Court.

2. Heard the learned counsel Sri.Spoorthy Hegde N., representing the wife and the learned counsel Sri. Nehal Thimmaiah M.P., representing the husband.

3. Facts in brief, germane for a consideration of the lis, are as follows:

The petitioners are husband and wife. The two get married on 20.06.2014. The relationship between the two appears to have turned sour and on such floundering of the relationship, the husband is before the concerned Court seeking annulment of marriage invoking Section 13 of the Hindu Marriage Act, 1955. In the said petition, the wife files an application under Section 24 of the Act seeking interim NC: 2024:KHC:2551 maintenance. It transpires that the respondent - husband objected to the grant of any maintenance on the ground that the wife herself is well to do and she would not need any maintenance. The concerned Court passes an order on 08.09.2023 directing payment of maintenance of Rs.70,000/-

to the wife from the hands of the husband.

4. The learned counsel representing the husband would vehemently oppose the grant of any maintenance as it does not reason as to why Rs.70,000/- is to be granted to the wife. Therefore, seeks quashment of the same contending that they stayed together only for six months and due to the unbearable torture of the wife, the husband had to suffer a lot in the employment. He would further contend that the assets and liabilities as on the date of the filing of the application should be made applicable to the husband's income and not what is earning today.

5. The learned counsel representing the wife Sri.Spoorthy Hegde N., would submit that the wife is not earning. She is not in employment and had filed her assets NC: 2024:KHC:2551 and liabilities statement before the concerned Court. It is the husband who is dodging the issue in filing the assets

and liabilities statement. It is the submission of the learned counsel for the wife that the husband is earning close to Rs.8 Crores annually and is fighting shy to part with Rs.70,000/- as maintenance that is awarded by the concerned Court. The learned counsel would further contend that it is the husband who is dodging the issue and not the wife.

6. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The relationship between the parties is not in dispute. The husband files a petition seeking annulment of marriage before the jurisdictional Court at Mumbai in M.J.Petition No.A1080/2017. Since the wife was residing at Bengaluru, the case is transferred to the jurisdictional Court in Bangalore and the proceedings are on since then.

NC: 2024:KHC:2551

8. In the proceedings, the wife files an application seeking interim maintenance invoking Section 24 of the Hindu Marriage Act. The assets and liabilities statement were directed to be placed before the Court. Calling in question the said order of the concerned Court directing filing of assets and liabilities statement, the husband had knocked at the doors of this Court in W.P.No.11146/2022. The writ petition comes to be disposed on 31.01.2023 by the following order:

"The petitioner is before this Court seeking the following prayer:

"a. Wherefore, the Petitioner herein prays that this Hon'ble Court be pleased to issue a writ in nature certiorari or any other writ or direction quashing the order dated 1.12.2020 i.e. Annexure-A, passed by the Learned Family Judge Bangalore upon the Application under section 91 of Code of Criminal Procedure in C.Misc No 635 of 2019 and pass such order or direction that this Hon'ble Court deems fit to pass in the facts and circumstances of the case.

b. That this Hon'ble Court be pleased to quash and set aside the entire proceedings being the C. Misc 635 of 2019 i.e. Annexure-B pending before the Principal Judge Bangalore."

2. Heard Sri Dinesh D. Tiwari, learned counsel for Sri. Siddharth B. Muchandi, learned counsel appearing for the petitioner and Sri. Spoorthy Hegde Nagaraja, learned counsel appearing for the respondent.

NC: 2024:KHC:2551

3. Brief facts that leads the petitioner to this Court, as borne out from the pleadings, are as follows:

The petitioner and the respondent are husband and wife who got married on 20.06.2014. The relationship between the two turning sour, has resulted in plethora of proceedings against each other. The husband instituted proceedings for dissolution of marriage before the Principal Judge, Family Court, Mumbai and the wife had instituted several proceedings both in Mumbai and Bengaluru. The present proceeding arises out of an order passed by the concerned Court at Bengaluru in Crl.Misc.No.635/2019.

4. Crl.Misc.No.635/2019 is instituted by the wife invoking Section 125 of the Cr.P.C. seeking maintenance from the hands of the husband. In the said case, the concerned Court directs filing of an affidavit regarding assets and liabilities of both the husband and wife on or before 03.01.2022. This is directed in the teeth of the judgment of the Apex Court in the case of RAJNESH V. NEHA¹ which directed filing of assets and liabilities statement in proceedings where interim maintenance was sought by the wife either under Section 24 of the Hindu Marriage Act, 1955 or under Section 125 of the Cr.P.C. and under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The order which directed filing of assets and liabilities statement is what drives the petitioner to this Court in the subject petition.

5. Learned counsel appearing for the petitioner would contend with vehemence that the respondent-wife has instituted several proceedings only to harass the husband and the proceedings now challenged which is instituted under Section 125 of the Cr.P.C. suffers from want of bona fides and therefore, the entire proceedings should be annulled and towards that prayer, has sought stay of further proceedings in the said Crl.Misc.No.635/2019. Learned counsel would 2020 SCC OnLine SC 903 NC: 2024:KHC:2551 lay emphasize upon the fact that the husband and wife reside in Mumbai and all proceedings are instituted in Mumbai, the wife flying from Mumbai to Bangalore has generated jurisdiction for herself in instituting these proceedings.

6. Learned counsel appearing for the respondent-wife would seek to refute the submissions to contend that the husband was the first to initiate divorce proceedings in Court at Mumbai which is transferred by an order of the Apex Court to the Court at Bengaluru and in those proceedings the wife has instituted proceedings under Section 125 of the Cr.P.C. and both are being heard together. Therefore, the submission of the learned counsel is without substance. He would further contend that the filing of assets and liabilities statement is imperative in the light of the judgment of the Apex Court in the case of RAJNESH (supra).

7. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

8. The afore-narrated facts between the husband and the wife are not in dispute and are therefore not reiterated. The husband initiating divorce proceedings against the wife at Family Court in Mumbai is not in dispute. After the said institution, the wife files a Transfer Petition before the Apex Court in Transfer Petition No.2623/2019. The Apex Court on the said transfer petition passes the following order:

"The present petition has been filed by the petitioner-wife seeking transfer of Petition No.A- 1080 of 2017 titled as "Samath Vimal Jagnani vs. Arzoo Samarth Jagnani" pending before the Principal Judge, Family Court at Badra, Mumbai to the Court of 2nd Additional Principal Family Judge, Bengaluru.

Heard learned counsel for the petitioner and learned senior counsel for the respondent.

NC: 2024:KHC:2551

Upon considering their respective

submissions, we are satisfied that the petitioner has made out a case for transfer of proceeding divorce petition filed by the respondent-husband registered as Petition No.A-1080 of 2017 titled as "Samarth Vimal Jagnani vs. Arzoo Samarth Jagnani" pending before the Principal Judge, Family Court at Bandra, Mumbai to the Family Court at Bengaluru. We order accordingly.

The records of the said proceeding shall be sent to the transferee Court and the Family Court at Bengaluru shall proceed in the matter from the stage at which the matter is transferred.

The transferee Court shall make effort to conclude the proceedings at any early date.

The Transfer Petition stands allowed in the above terms.

Pending applications, if any, shall stand disposed of."

The Apex Court directs that the proceedings instituted by the husband should be transferred to the Court at Bengaluru and has directed that the transferee Court i.e., the concerned Court Bengaluru to decide the issue at an early date. This order is passed on 02.09.2022. After which, the proceedings are now transferred to the concerned Court and the proceedings are going on. Before the transfer could happen, the wife had instituted a Criminal Miscellaneous Petition by invoking Section 125 of the Cr.P.C. in Crl.Misc.No.635/2019. In the said proceeding, the concerned Court passes the following order.

"The application is filed on 18.9.2021. Sufficient opportunity has already been granted, hence objections to said application is taken as not filed. Both parties are hereby directed to file affidavit regarding their assets and liabilities and the respondent shall produce his salary slip, IT returns from 2016-2017 to till date, investment details, shares and bonds and particulars regarding his other movable

and immovable

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NC: 2024:KHC:2551 assets along with his affidavit regarding his assets and liabilities.

Accordingly, the application filed under Sec.91 of Cr.PC is disposed off.

To file affidavit regarding assets and liabilities of the parties along with documents by 3.1.2022."

The Court directs both the parties to file affidavit regarding their assets and liabilities statement by production of necessary material of IT returns or salary slip till date. The application was filed under Section 91 of the Cr.P.C. seeking production of such documents. This is allowed by directing an affidavit to be filed on or before 03.01.2022. There can be no qualm about what the concerned Court has directed as it is in tune with the judgment of the Apex Court in the case of RAJNESH (supra).

9. In the light of the order impugned being in consonance with the judgment of the Apex Court, there is no warrant for interference. In regard to all other contentions that are advanced by the petitioner which would touch upon the malafides being urged against the wife, should all be urged before the concerned Court in the proceeding instituted by the wife in Crl.Misc.No.635/2019. The stage for consideration of all those malafides in a challenge to an innocuous order would not be entertainable. Therefore, leaving open all the contentions of the respective parties to be urged before the concerned Court, the petition would necessarily meet its dismissal and is accordingly dismissed.

10. Since the proceedings are pending since 2017 between the two, first at Mumbai and now at Bengaluru before the concerned Court, the Court shall endeavour to conclude the proceedings both concerning divorce and the impugned proceedings in Crl.Misc.No.635/2019 within an outer limit of 6 months from the date of receipt of a copy of this order, if not earlier in the light of the order of the Apex Court (supra)

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NC: 2024:KHC:2551 directing the proceedings to be concluded at an early date.

11. It is needless to observe that both the husband and the wife shall co-operate with the proceedings for its conclusion in terms of the order.

Ordered accordingly.

I.A.No.1/2023 is dismissed as a consequence."

9. A direction was issued to conclude the proceedings, within an outer limit of six months from the date of the receipt of copy of the said order. Six months have long gone by and the proceedings are

yet to conclude. The reason for non-conclusion of the proceedings is said to the non-filing of the assets and liabilities statement by the husband as a resolution of the lis, qua, the maintenance could be arrived at only if the assets and liabilities statement of the respective parties were placed before the concerned Court, in the light of the judgment of the Apex Court in the case of RAJNESH v.

NEHA vs. Neha2 as followed in ADITI @ MITHI VS. JITESH SHARMA .

2020 SCC Online SC 903 2023 SCC Online SC 1451

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NC: 2024:KHC:2551

10. The husband does not file the assets and liabilities statement. The concerned Court passes the impugned order directing payment of Rs.70,000/- as maintenance in the absence of assets and liabilities statement. The husband then has filed the assets and liabilities statement before this Court in a sealed cover to contend that the income of the husband is now close to Rs.5.5 Crores and not Rs.8 Crores, as is sought to be urged by the wife. Be that as it may.

11. A perusal at the impugned order would indicate that it bears no application of mind as is necessary in terms of the judgment of the Apex Court in the case of RAJNESH (supra) as followed by ADITI (supra).

12. In the light of the said circumstance that the order does not bear application of mind, the concerned Court will have to reconsider the application of the petitioner filed under Section 24 of the Hindu Marriage Act on the husband placing the assets and liabilities statement before the concerned Court.

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NC: 2024:KHC:2551

13. The submission of the learned counsel for the petitioner that the assets and liabilities as on the date of the application should be taken note of, is noted to be rejected, as it runs counter to what the Apex Court has held in the case of RAJNESH (supra) as followed by ADITI (supra).

14. Therefore, the husband shall place the assets and liabilities statement before the concerned Court and the concerned Court shall reconsider the application, within four weeks from the date of receipt of the copy of the order.

15. For the aforesaid reasons, the following:

ORDER

- i) The writ petitions are allowed;
- ii) The impugned 08.09.2023 passed by the learned II Additional Principal Family Judge, Bengaluru in M.C. No.6470/2022 stands quashed;
- iii) The matter is remitted back to the hands of the concerned court to reconsider the application bearing in mind the observations made in the course of the order and after perusing the assets

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NC: 2024:KHC:2551 and liabilities statement of both husband and the wife;

iv) In the light of the earlier order that the proceedings should terminate within six months, as it is now seven years that the parties are fighting before the concerned Court, I again reiterate that after the decision in, on the application under Section 24 of the Act, the proceedings shall conclude within three months. If the wife or the husband would not co-operate for conclusion of the proceedings, it is open to the concerned court to pass appropriate orders, without waiting for the husband or the wife, whoever would default in not co-operating with the proceedings;

v) The assets and liabilities shall be placed before the Court by both the husband and the wife, within two weeks from the date of the receipt of the copy of the order. The submissions on the said assets and liabilities statement shall be made by the respective parties, within one week thereafter and the court then would pass appropriate orders on the application, within one week thereafter.

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NC: 2024:KHC:2551

vi) The respondent - wife is permitted to withdraw the amount in deposit of Rs.15 lakhs that is deposited before this Court.

vii) The Registry shall transmit the said amount to the account of the respondent - wife after verifying the details, without any loss of time.

Sd/-

JUDGE KG

Mr Samarth Vimal Jagnani vs Mrs Arzoo Samarth Jagnani @ Arzoo ... on 19 January, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:2551
WP No. 21986 of 2023
C/W WP No. 26319 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE M. NAGAPRASANNA

WRIT PETITION NO. 21986 OF 2023 (GM-FC)

C/W

WRIT PETITION NO. 26319 OF 2023 (GM-FC)

IN W.P.No.21986/2023:

BETWEEN:

ARZOO SAMARTH JAGNANI
W/O SAMARTH VIMAL JAGNANI,
AGED ABOUT 37 YEARS,
R/AT C1-1502, L AND T SOUTH CITY,
AREKERE, MICO LAYOUT, BG ROAD,
BANGALORE - 560076

...PETITIONER

(BY SRI. SPOORTHY HEGDE N., DVOCATE)

AND:

SMAARTH VIMAL JAGNANI
S/O VIMAL JAGNANI,
AGED ABOUT 40 YEARS,
R/AT FLAT NO.302, BALAJI TOWERS,
JAISUKHLAL MEHTA ROAD, SANTACRUZ WEST,
MUMBAI - 400054

...RESPONDENT

(BY SRI. NEHAL THIMMIAH M.P., ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN MC NO.6470/2022 ON THE FILE OF THE 2ND ADDL. PRINCIPAL FAMILY JUDGE, BENGALURU; A) DIRECTION IN NATURE OF WRIT, MODIFYING BY ORDERING THE INTERIM MAINTENANCE AS PRAYED FOR IN THE APPLICATION THE ORDER DATED 08/09/2023 AT ANNEXURE-J PASSED BY THE LEARNED 2ND ADDL. PRINCIPAL FAMILY JUDGE, BENGALURU IN M.C. NO.6470/2022; B) BY ORDERING THE INTERIM MAINTENANCE BY CONSIDERING THE

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NC: 2024:KHC:2551

WP No. 21986 of 2023

C/W WP No. 26319 of 2023

PRESENT INCOME AND ASSETS OF THE RESPONDENT AS PER THE GUIDELINES LAID DOWN BY THIS HONBLE COURTS AND THE HONBLE SUPREME COURT.

IN W.P.No.26319/2023:

BETWEEN:

MR. SAMARTH VIMAL JAGNANI
S/O VIMAL JAGNANI,
AGED ABOUT 40 YEARS,
OCC: SERVICE
R/AT: FLAT NO.302, BALAJI TOWERS,
JAISUKHLAL MEHTA ROAD, SANTACRUZ WEST,
MUMBAI - 400054

...PETITIONER

(BY SRI. NEHAL THIMMAIAH M.P., DVOCATE)

AND:

MRS. ARZOO SAMARTH JAGNANI
@ ARZOO RAMGOPAL JAJODIA
W/O SAMARTH JAGNANI,
AGED ABOUT 37 YEARS,
OCC: BUSINESS
R/AT: JAJODIA VILLA, MEGH MALHAR
COMPLEX, NEAR ROYAL CHALLENGE
RESTAURANT, OFF. GEN A.K. VAIDYA MARG
GOREGAON EAST
MUMBAI - 400 063

...RESPONDENT

(BY SRI. SPOORTHY HEGDE N., ADV. FOR C/R)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 08/09/2023 PASSED BY THE LEARNED 2ND ADDL. PRINCIPAL JUDGE, FAMILY COURT, BENGALURU UPON THE APPLICATION UNDER

SECTION 125 OF CODE OF CRIMINAL PROCEDURE IN M.C.6470 OF
2022 VIDE (ANNEXURE-A).

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:2551
WP No. 21986 of 2023
C/W WP No. 26319 of 2023

ORDER

These petitions are preferred by the husband and wife respectively. The husband prefers W.P.No.26319/2023 calling in question the order of grant of maintenance by the concerned Court. W.P.No.21986/2023 is preferred by the wife seeking enhancement of maintenance as ordered by the concerned Court.

2. Heard the learned counsel Sri.Spoorthy Hegde N., representing the wife and the learned counsel Sri. Nehal Thimmaiah M.P., representing the husband.

3. Facts in brief, germane for a consideration of the lis, are as follows:

The petitioners are husband and wife. The two get married on 20.06.2014. The relationship between the two appears to have turned sour and on such floundering of the relationship, the husband is before the concerned Court seeking annulment of marriage invoking Section 13 of the Hindu Marriage Act, 1955. In the said petition, the wife files an application under Section 24 of the Act seeking interim NC: 2024:KHC:2551 maintenance. It transpires that the respondent - husband objected to the grant of any maintenance on the ground that the wife herself is well to do and she would not need any maintenance. The concerned Court passes an order on 08.09.2023 directing payment of maintenance of Rs.70,000/-

to the wife from the hands of the husband.

4. The learned counsel representing the husband would vehemently oppose the grant of any maintenance as it does not reason as to why Rs.70,000/- is to be granted to the wife. Therefore, seeks quashment of the same contending that they stayed together only for six months and due to the unbearable torture of the wife, the husband had to suffer a lot in the employment. He would further contend that the assets and liabilities as on the date of the filing of the application should be made applicable to the husband's income and not what is earning today.

5. The learned counsel representing the wife Sri.Spoorthy Hegde N., would submit that the wife is not earning. She is not in employment and had filed her assets NC: 2024:KHC:2551 and liabilities statement before the concerned Court. It is the husband who is dodging the issue in filing the assets

and liabilities statement. It is the submission of the learned counsel for the wife that the husband is earning close to Rs.8 Crores annually and is fighting shy to part with Rs.70,000/- as maintenance that is awarded by the concerned Court. The learned counsel would further contend that it is the husband who is dodging the issue and not the wife.

6. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The relationship between the parties is not in dispute. The husband files a petition seeking annulment of marriage before the jurisdictional Court at Mumbai in M.J.Petition No.A1080/2017. Since the wife was residing at Bengaluru, the case is transferred to the jurisdictional Court in Bangalore and the proceedings are on since then.

NC: 2024:KHC:2551

8. In the proceedings, the wife files an application seeking interim maintenance invoking Section 24 of the Hindu Marriage Act. The assets and liabilities statement were directed to be placed before the Court. Calling in question the said order of the concerned Court directing filing of assets and liabilities statement, the husband had knocked at the doors of this Court in W.P.No.11146/2022. The writ petition comes to be disposed on 31.01.2023 by the following order:

"The petitioner is before this Court seeking the following prayer:

"a. Wherefore, the Petitioner herein prays that this Hon'ble Court be pleased to issue a writ in nature certiorari or any other writ or direction quashing the order dated 1.12.2020 i.e. Annexure-A, passed by the Learned Family Judge Bangalore upon the Application under section 91 of Code of Criminal Procedure in C.Misc No 635 of 2019 and pass such order or direction that this Hon'ble Court deems fit to pass in the facts and circumstances of the case.

b. That this Hon'ble Court be pleased to quash and set aside the entire proceedings being the C. Misc 635 of 2019 i.e. Annexure-B pending before the Principal Judge Bangalore."

2. Heard Sri Dinesh D. Tiwari, learned counsel for Sri. Siddharth B. Muchandi, learned counsel appearing for the petitioner and Sri. Spoorthy Hegde Nagaraja, learned counsel appearing for the respondent.

NC: 2024:KHC:2551

3. Brief facts that leads the petitioner to this Court, as borne out from the pleadings, are as follows:

The petitioner and the respondent are husband and wife who got married on 20.06.2014. The relationship between the two turning sour, has resulted in plethora of proceedings against each other. The husband instituted proceedings for dissolution of marriage before the Principal Judge, Family Court, Mumbai and the wife had instituted several proceedings both in Mumbai and Bengaluru. The present proceeding arises out of an order passed by the concerned Court at Bengaluru in Crl.Misc.No.635/2019.

4. Crl.Misc.No.635/2019 is instituted by the wife invoking Section 125 of the Cr.P.C. seeking maintenance from the hands of the husband. In the said case, the concerned Court directs filing of an affidavit regarding assets and liabilities of both the husband and wife on or before 03.01.2022. This is directed in the teeth of the judgment of the Apex Court in the case of RAJNESH V. NEHA¹ which directed filing of assets and liabilities statement in proceedings where interim maintenance was sought by the wife either under Section 24 of the Hindu Marriage Act, 1955 or under Section 125 of the Cr.P.C. and under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The order which directed filing of assets and liabilities statement is what drives the petitioner to this Court in the subject petition.

5. Learned counsel appearing for the petitioner would contend with vehemence that the respondent-wife has instituted several proceedings only to harass the husband and the proceedings now challenged which is instituted under Section 125 of the Cr.P.C. suffers from want of bona fides and therefore, the entire proceedings should be annulled and towards that prayer, has sought stay of further proceedings in the said Crl.Misc.No.635/2019. Learned counsel would 2020 SCC OnLine SC 903 NC: 2024:KHC:2551 lay emphasize upon the fact that the husband and wife reside in Mumbai and all proceedings are instituted in Mumbai, the wife flying from Mumbai to Bangalore has generated jurisdiction for herself in instituting these proceedings.

6. Learned counsel appearing for the respondent-wife would seek to refute the submissions to contend that the husband was the first to initiate divorce proceedings in Court at Mumbai which is transferred by an order of the Apex Court to the Court at Bengaluru and in those proceedings the wife has instituted proceedings under Section 125 of the Cr.P.C. and both are being heard together. Therefore, the submission of the learned counsel is without substance. He would further contend that the filing of assets and liabilities statement is imperative in the light of the judgment of the Apex Court in the case of RAJNESH (supra).

7. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

8. The afore-narrated facts between the husband and the wife are not in dispute and are therefore not reiterated. The husband initiating divorce proceedings against the wife at Family Court in Mumbai is not in dispute. After the said institution, the wife files a Transfer Petition before the Apex Court in Transfer Petition No.2623/2019. The Apex Court on the said transfer petition passes the following order:

"The present petition has been filed by the petitioner-wife seeking transfer of Petition No.A- 1080 of 2017 titled as "Samath Vimal Jagnani vs. Arzoo Samarth Jagnani" pending before the Principal Judge, Family Court at Badra, Mumbai to the Court of 2nd Additional Principal Family Judge, Bengaluru.

Heard learned counsel for the petitioner and learned senior counsel for the respondent.

NC: 2024:KHC:2551

Upon considering their respective

submissions, we are satisfied that the petitioner has made out a case for transfer of proceeding divorce petition filed by the respondent-husband registered as Petition No.A-1080 of 2017 titled as "Samarth Vimal Jagnani vs. Arzoo Samarth Jagnani" pending before the Principal Judge, Family Court at Bandra, Mumbai to the Family Court at Bengaluru. We order accordingly.

The records of the said proceeding shall be sent to the transferee Court and the Family Court at Bengaluru shall proceed in the matter from the stage at which the matter is transferred.

The transferee Court shall make effort to conclude the proceedings at any early date.

The Transfer Petition stands allowed in the above terms.

Pending applications, if any, shall stand disposed of."

The Apex Court directs that the proceedings instituted by the husband should be transferred to the Court at Bengaluru and has directed that the transferee Court i.e., the concerned Court Bengaluru to decide the issue at an early date. This order is passed on 02.09.2022. After which, the proceedings are now transferred to the concerned Court and the proceedings are going on. Before the transfer could happen, the wife had instituted a Criminal Miscellaneous Petition by invoking Section 125 of the Cr.P.C. in Crl.Misc.No.635/2019. In the said proceeding, the concerned Court passes the following order.

"The application is filed on 18.9.2021. Sufficient opportunity has already been granted, hence objections to said application is taken as not filed. Both parties are hereby directed to file affidavit regarding their assets and liabilities and the respondent shall produce his salary slip, IT returns from 2016-2017 to till date, investment details, shares and bonds and particulars regarding his other movable

and immovable

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NC: 2024:KHC:2551 assets along with his affidavit regarding his assets and liabilities.

Accordingly, the application filed under Sec.91 of Cr.PC is disposed off.

To file affidavit regarding assets and liabilities of the parties along with documents by 3.1.2022."

The Court directs both the parties to file affidavit regarding their assets and liabilities statement by production of necessary material of IT returns or salary slip till date. The application was filed under Section 91 of the Cr.P.C. seeking production of such documents. This is allowed by directing an affidavit to be filed on or before 03.01.2022. There can be no qualm about what the concerned Court has directed as it is in tune with the judgment of the Apex Court in the case of RAJNESH (supra).

9. In the light of the order impugned being in consonance with the judgment of the Apex Court, there is no warrant for interference. In regard to all other contentions that are advanced by the petitioner which would touch upon the malafides being urged against the wife, should all be urged before the concerned Court in the proceeding instituted by the wife in Crl.Misc.No.635/2019. The stage for consideration of all those malafides in a challenge to an innocuous order would not be entertainable. Therefore, leaving open all the contentions of the respective parties to be urged before the concerned Court, the petition would necessarily meet its dismissal and is accordingly dismissed.

10. Since the proceedings are pending since 2017 between the two, first at Mumbai and now at Bengaluru before the concerned Court, the Court shall endeavour to conclude the proceedings both concerning divorce and the impugned proceedings in Crl.Misc.No.635/2019 within an outer limit of 6 months from the date of receipt of a copy of this order, if not earlier in the light of the order of the Apex Court (supra)

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NC: 2024:KHC:2551 directing the proceedings to be concluded at an early date.

11. It is needless to observe that both the husband and the wife shall co-operate with the proceedings for its conclusion in terms of the order.

Ordered accordingly.

I.A.No.1/2023 is dismissed as a consequence."

9. A direction was issued to conclude the proceedings, within an outer limit of six months from the date of the receipt of copy of the said order. Six months have long gone by and the proceedings are

yet to conclude. The reason for non-conclusion of the proceedings is said to the non-filing of the assets and liabilities statement by the husband as a resolution of the lis, qua, the maintenance could be arrived at only if the assets and liabilities statement of the respective parties were placed before the concerned Court, in the light of the judgment of the Apex Court in the case of RAJNESH v.

NEHA vs. Neha2 as followed in ADITI @ MITHI VS. JITESH SHARMA .

2020 SCC Online SC 903 2023 SCC Online SC 1451

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NC: 2024:KHC:2551

10. The husband does not file the assets and liabilities statement. The concerned Court passes the impugned order directing payment of Rs.70,000/- as maintenance in the absence of assets and liabilities statement. The husband then has filed the assets and liabilities statement before this Court in a sealed cover to contend that the income of the husband is now close to Rs.5.5 Crores and not Rs.8 Crores, as is sought to be urged by the wife. Be that as it may.

11. A perusal at the impugned order would indicate that it bears no application of mind as is necessary in terms of the judgment of the Apex Court in the case of RAJNESH (supra) as followed by ADITI (supra).

12. In the light of the said circumstance that the order does not bear application of mind, the concerned Court will have to reconsider the application of the petitioner filed under Section 24 of the Hindu Marriage Act on the husband placing the assets and liabilities statement before the concerned Court.

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NC: 2024:KHC:2551

13. The submission of the learned counsel for the petitioner that the assets and liabilities as on the date of the application should be taken note of, is noted to be rejected, as it runs counter to what the Apex Court has held in the case of RAJNESH (supra) as followed by ADITI (supra).

14. Therefore, the husband shall place the assets and liabilities statement before the concerned Court and the concerned Court shall reconsider the application, within four weeks from the date of receipt of the copy of the order.

15. For the aforesaid reasons, the following:

ORDER

- i) The writ petitions are allowed;
- ii) The impugned 08.09.2023 passed by the learned II Additional Principal Family Judge, Bengaluru in M.C. No.6470/2022 stands quashed;
- iii) The matter is remitted back to the hands of the concerned court to reconsider the application bearing in mind the observations made in the course of the order and after perusing the assets

- 14 -

NC: 2024:KHC:2551 and liabilities statement of both husband and the wife;

iv) In the light of the earlier order that the proceedings should terminate within six months, as it is now seven years that the parties are fighting before the concerned Court, I again reiterate that after the decision in, on the application under Section 24 of the Act, the proceedings shall conclude within three months. If the wife or the husband would not co-operate for conclusion of the proceedings, it is open to the concerned court to pass appropriate orders, without waiting for the husband or the wife, whoever would default in not co-operating with the proceedings;

v) The assets and liabilities shall be placed before the Court by both the husband and the wife, within two weeks from the date of the receipt of the copy of the order. The submissions on the said assets and liabilities statement shall be made by the respective parties, within one week thereafter and the court then would pass appropriate orders on the application, within one week thereafter.

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NC: 2024:KHC:2551

vi) The respondent - wife is permitted to withdraw the amount in deposit of Rs.15 lakhs that is deposited before this Court.

vii) The Registry shall transmit the said amount to the account of the respondent - wife after verifying the details, without any loss of time.

Sd/-

JUDGE KG

Malin And Ors vs Shareefa Begum on 19 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:729
CRL.P No.201622 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.201622 OF 2023 (482)
BETWEEN:

1. SMT. MALIN
W/O SHAIK MOHAMMED RAFEEQ
AGED ABOUT 50 YEARS, OCC: HOUSEHOLD,
 2. SRI SHAIK MOHAMMED RAFEEQ
S/O SHAIK ABDUL HAMEED,
AGED ABOUT 60 YEARS, OCC: AGRICULTURE,
 3. OSRI SHAIK ABBAS
S/O SHAIK MOHAMMED RAFEEQ,
AGED ABOUT 32 YEARS, OCC: MESON,
 4. SMT. AYEESHA BEGUM W/O SHAIK ABBAS
AGED ABOUT 28 YEARS, OCC: HOUSEHOLD,
 5. SMT. GOUSIA BEGUM W/O MOHAMMED RAFEEQ
AGED ABOUT 35 YEARS, OCC: HOUSEHOLD,
 6. SRI MOHAMMED RAFEEQ S/O HUSSAIN BASHA
AGED ABOUT 38 YEARS, OCC: AGRICULTURE,
- PETITIONER NOS.1 TO 6 ARE R/O HALVI VILLAGE,
TQ. KAVITALAM, DIST. KURNool A.P.

Digitally signed by
SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

7. SRI HUSSAIN SAB S/O MABU SAB
AGED ABOUT 65 YEARS, OCC: AGRICULTURE,

8. SMT. FATIMA BEGUM W/O HUSSAIN SAB
AGED ABOUT 55 YEARS, OCC: HOUSEHOLD,
-2-

NC: 2024:KHC-K:729
CRL.P No.201622 of 2023

PETITIONER NOS.7 AND 8 ARE R/O KOLAMPET,
TQ. KOSAGI, DIST. KURNOOL A.P.

...PETITIONERS

(BY SRI ARUNKUMAR AMARGUNDAPPA, ADVOCATE)

AND:

SMT. SHAREEFA BEGUM W/O MUKTHAR BASHA
AGED ABOUT 26 YEARS, OCC: HOUSEHOLD,
R/O HALVI VILLAGE,
TQ. KAVITALAM A.P.
NOW RESIDING AT UMALUTI VILLAGE,
TQ. SINDHANUR, DIST. RAICHUR- 584128.

...RESPONDENT

THIS CRL.P. IS FILED U/S.482 OF CR.P.C. PRAYING TO
ALLOW THE PETITION AND FURTHER QUASH ENTIRE
PROCEEDINGS INITIATED AGAINST THE
PETITIONERS/RESPONDENTS NO.2 TO 9, UNDER SECTION 12
OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE
ACT R/W RULE 6 OF PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE RULES, 2006, ON THE STRENGTH OF COMPLAINT
FILED BY THE RESPONDENT/PETITIONER HEREIN IN
CRL.MISC.NO.321 OF 2023, PENDING ON THE FILE OF
ADDITIONAL CIVIL JUDGE AND JMFC, SINDHANUR IN SO FAR
AS IT RELATE TO PETITIONERS HEREIN.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-K:729
CRL.P No.201622 of 2023

ORDER

The learned counsel for the petitioners is absent. In spite of granting sufficient opportunities, office objections are not complied with. Hence, the petition stands dismissed for non-compliance of office objections.

Sd/-

JUDGE RSP

Vittal S/O Krishnappa Walikar vs Shilpa Alleged W/O Vittal Walikar And ... on 17 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:637
CRL.RP No. 200041 of 2022

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO. 200041 OF 2022 (397)

BETWEEN:

VITTAL S/O KRISHNAPPA WALIKAR
AGED 49 YEARS, OCC: CONTRACT EMPLOYEE,
R/O LOGAVI VILLAGE,
TQ. AND DIST. VIJAYAPURA- 586104.

...PETITIONER

(BY SRI SANTOSH KUMAR B. BIRADAR, ADVOCATE)

AND:

Digitally signed
by SHILPA R
TENIHALLI

Location: HIGH
COURT OF
KARNATAKA

1. SHILPA ALLEGED W/O VITTAL WALIKAR
AGED 42 YEARS, OCC: HOUSE HOLD,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPURA-586114
2. KUMARI VAISHNAVI ALLEGED D/O VITTAL WALIKAR
AGED 16 YEARS, OCC: STUDENT,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPURA- 586114
3. VAIDEHI ALLEGED D/O VITTAL WALIKAR
AGED 14 YEARS, OCC: STUDENT,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPURA- 586114,

R2 AND R3 ARE MINORS, REP. BY THEIR NATURAL
MOTHER R1)

4. SMT. SHOBHA W/O VITTAL WALIKAR

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NC: 2024:KHC-K:637
CRL.RP No. 200041 of 2022

AGE: 49 YEARS, OCC: SERVICE,
R/O LOGAVI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586104

5. KRISHANAPPA S/O BONNAPPA WALIKAR
AGED 69 YEARS, OCC: AGRICULTURE,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586114
6. SUBHAS S/O KRISHANAPPA WALIKAR
AGED 56 YEARS, OCC: AGRICULTURE,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586114
7. SMT. SHOBHA W/O SUBHASH WALIKAR
AGED 48 YEARS, OCC: AGRICULTURE,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586114
8. GAJAPPA S/O KRISHANAPPA WALIKAR
AGED 41 YEARS, OCC. AGRICULTURE,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586114
9. SMT. REKHA W/O GAJAPPA WALIKAR
AGED 36 YEARS, OCC: HOUSEHOLD,
R/O KALLAKAVATAGI VILLAGE,
TQ. AND DIST. VIJAYAPUR- 586114

... RESPONDENTS

(BY SRI. R.S. LAGALI, ADVOCATE FOR R1;
R2 AND R3 ARE MINORS REPTD. BY R1;
VIDE ORDER DATED 20.02.2023 NOTICE TO R4 TO R9 IS
DISPENSED WITH)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.P.C PRAYING
TO SET-ASIDE THE ORDER DATED 06-03-2021 PASSED UNDER
SECTION 25 OF THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005 ON I.A.NO.IV IN CRIMINAL MISC
726/2017 (WRONGLY TYPED AS CIVIL MISC NO.726/2017) ON

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NC: 2024:KHC-K:637

THE FILE III ADDITIONAL CIVIL JUDGE AND JMFC, VIJAYAPUR
AND CONFIRMED THE ORDER DATED 29.07.2022 IN CRIMINAL
APPEAL NO.15/2021 ON THE FILE OF THE II ADDITIONAL
DISTRICT AND SESSIONS JUDGE, VIJAYAPUR.
CONSEQUENTLY, TO ALLOW THE I.A.NO. IV FILED BY THE
PETITIONER HEREIN UNDER SECTION 25 OF THE PROTECTION
OF DOMESTIC VIOLENCE ACT, 2005.

THIS PETITION COMING ON FOR FINAL HEARING, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed challenging the order passed by the learned II Additional Sessions Judge, Vijayapur in Criminal Appeal No.15/2021 dated 29.07.2022.

2. The brief factual matrix leading to the case are that the respondents herein filed a petition in Crl.Misc.No.726/2017 against the petitioner herein and others under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 (for short 'D. V. Act') claiming various reliefs under Sections 18, 19, 20, 21, 22 and 23 of the D. V. Act. Further, an application in NC: 2024:KHC-K:637 I.A.No.1 is also filed under Section 20(d) of the D. V. Act seeking interim maintenance. The Court has awarded interim maintenance of Rs.3,000/- per month to respondent No.1 and Rs.1,500/- per month each to respondent Nos.2 and 3 until further orders. Thereafter, the petitioner herein has filed an application in I.A.No.IV under Section 25 of the D. V. Act for revoking the order dated 13.10.2017 passed on I.A.No.1 by asserting that respondent No.1 herein had already filed Crl.Misc.No.141/2017 before the Family Court, Vijayapura for herself and on behalf of her children and maintenance of Rs.4,000/- per month to respondent No.1 and Rs.1,500/- per month each to respondent Nos.2 and 3 was awarded, but, concealing the said aspect, the interim maintenance was awarded. Hence, the petitioner sought revocation of the said order.

3. To this application, objections were filed by the respondents herein disputing the entire claim. The learned Magistrate after appreciating the documentary NC: 2024:KHC-K:637 evidence, by order dated 06.03.2021, dismissed the said application filed by the petitioner herein. Against this order, the petitioner has approached the learned II Additional Sessions Judge, Vijayapura in Criminal Appeal No.15/2021 and the learned Sessions Judge vide order dated 29.07.2022 dismissed the appeal filed under Section 29 of the D. V. Act by placing reliance on a decision of the Hon'ble Apex Court in the case of Rajnesh vs. Neha and Another reported in 2021(2) SCC 324. Challenging this order of the learned Sessions Judge, this revision is filed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Perused

the records.

5. The main contention of learned counsel for the petitioner is that the Appellate Court has failed to appreciate the principles enunciated by the Hon'ble Apex Court in Rajnesh's case (supra) and ignored the directions of overlapping jurisdiction and the mandatory NC: 2024:KHC-K:637 requirement on the part of the claimants/respondents to plead in detail regarding maintenance awarded in other proceedings. He would contend that though it was brought to the notice of the Trial Court, the same was not appreciated and the learned Sessions Judge has appreciated it erroneously holding that as per the decision of the Hon'ble Apex Court in Rajnesh's case (supra), the maintenance can be awarded in addition. Hence, he would seek that the revision petition may be allowed by setting aside the impugned order.

6. Per contra, the learned counsel for the respondents would contend that though the wife has not pleaded regarding the earlier maintenance, the same was brought to the notice of the Court and the Court has considered this aspect. He has also produced certain documents to show that the daughter is suffering from serious ailments and required additional maintenance. Alternatively, he would contend that the matter is pending NC: 2024:KHC-K:637 since 2017 and a time frame may be fixed for disposal of the entire matter.

7. Having heard the arguments and perusing the records, it is an undisputed fact that respondent No.1 herein is the wife of the petitioner and respondent Nos.2 and 3 are their children. It is also an undisputed fact that the respondents have already filed Crl.Misc.No.141/2017 before the Family Court, Vijayapura seeking maintenance, which came to be allowed by awarding maintenance of Rs.4,000/- per month to respondent No.1 and Rs.1,500/- per month each to respondent Nos.2 and 3. This fact is undisputed. Subsequently, the respondents have filed a petition under Section 12 of the D. V. Act claiming maintenance along with protection order, compensation etc. The respondents have also filed I.A.No.1 seeking interim maintenance and vide order dated 13.10.2017, the learned Magistrate has awarded interim maintenance of Rs.3,000/- per month to respondent No.1 and Rs.1,500/- per month each to respondent Nos.2 and 3.

NC: 2024:KHC-K:637

8. However, on perusal of the petition filed under Section 12(1) of the D. V. Act, there is absolutely no reference of earlier proceedings filed for maintenance and it is simply asserted that Crl.Misc.No.141/2017 is pending. Later on, the petitioner herein has filed I.A.No.IV for alteration of the interim maintenance awarded on the ground that before the Family Court, the maintenance was already awarded. The objections were filed by the respondents to this application, wherein, they have neither admitted nor disputed the said aspect and the learned Magistrate has dismissed the application.

9. The said order is being assailed in Criminal Appeal No.15/2021 before the learned Sessions Judge. The learned Sessions Judge considering the decision of the Hon'ble Apex Court in Rajnesh's case (supra), dismissed the appeal asserting that as per the said decision, maintenance awarded under the D. V. Act can be enhanced in addition to the order of maintenance under Section 125 of

Cr.P.C. or any other law for the time being NC: 2024:KHC-K:637 in force. But, on perusal of the decision reported in Rajnesh's case (supra), in the last paragraph, the Hon'ble Apex Court has dealt with an issue of overlapping jurisdiction and issued certain directions to overcome the overlapping jurisdiction and avoid conflicting orders being passed in a different proceedings. A direction was given that in a subsequent maintenance proceedings, the applicant shall disclose the earlier maintenance proceedings and the orders passed thereunder. But, admittedly in the instant case, no such pleadings were forthcoming and even in the petition a single submission is made regarding Family Court proceedings, but, when I.A.No.IV is filed for revoking the order, there is no denial or acceptance of this aspect. It is an admitted fact that the maintenance was already awarded by the Family Court. The Hon'ble Apex Court in Rajnesh's case (supra) has issued directions and these directions are only in respect of overlapping jurisdiction, but, in the instant case, the respondents herein did not specify any of these aspects and in the objection statement to the application

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NC: 2024:KHC-K:637 for revoking, the respondents could have admitted the maintenance awarded and could have pleaded that the maintenance is insufficient and the medical condition of the daughter as well as the capacity of the petitioner herein to pay the maintenance. But, without such pleadings, the Courts below have erroneously and wrongly applied the principles laid down by the Hon'ble Apex Court in Rajnesh's case (supra). Hence, the orders under revision are not at all sustainable and there is violation of the mandate of the decision rendered by the Hon'ble Apex Court in the above cited case. Hence, they do not survive for consideration and calls for interference.

10. At the same time, the learned counsel for the respondents would submit that the matter is pending since 2017 and the daughter is suffering from serious ailments and considering this aspect, the higher maintenance is required and hence, necessary direction needs to be issued to the Trial Court to dispose of the matter within the time framed. Hence, I am of the

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NC: 2024:KHC-K:637 considered opinion that the said submission deserves consideration.

11. In view of these facts and circumstances, the revision petition needs to be allowed. Accordingly, I proceed to pass the following:

ORDER The revision petition is allowed.

The impugned order passed in Crl.Misc.No.726/2017 by the learned III Additional Civil Judge, Vijayapura dated 06.03.2021, which was confirmed by the II Additional District and Sessions Judge, Vijayapura in Criminal Appeal No.15/2021 vide order dated 29.07.2022, are set aside.

The parties are directed to appear before the learned Magistrate and the learned Magistrate is hereby directed to dispose of the main matter by recording the evidence within a period of four

months from the date of communication of this order. Further, the learned Magistrate is directed that, if he is unable to dispose of

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NC: 2024:KHC-K:637 the matter within four months as directed for any reasons or non cooperation from either of the parties, he is at liberty to pass interim order regarding maintenance.

Registry is directed to communicate this order to the Trial Court immediately by mail.

Sd/-

JUDGE SRT

R. Smitha Subramanyachar vs Sri Manjunath S K on 12 January, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:2207
RPFC No. 81 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2024

BEFORE

R

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REV. PETITION FAMILY COURT NO.81 OF 2023

BETWEEN:

1. R. SMITHA SUBRAMANYACHAR
W/O SRI. MANJUNATH S.K
D/O SRI. SUBRAMANYA ACHAR,
AGED ABOUT 38 YEARS
R/AT NO.64, "SRI DARSHINI",
SATHYA MARGA, SIDDHARTHA LAYOUT,
1ST STAGE, MYSURU - 570 011.

2. SRI. ADHVIK MANJUNATH,
S/O SRI. MANJUNATH S.K,
AGED ABOUT 5 YEARS,
SINCE MINOR REP. BY HIS NATURAL
GUARDIAN,
SMITHA SUBRAMANYACHAR(MOTHER)

Digitally signed by
RAMYA D
Location: HIGH
COURT OF
KARNATAKA

R/AT NO.64, "SRI DARSHINI",
SATHYA MARGA, SIDDHARTHA LAYOUT,
1ST STAGE, MYSURU - 570 011.

...PETITIONERS

(BY SRI V. LAKSHMINARAYANA, SENIOR COUNSEL FOR

R. Smitha Subramanyachar vs Sri Manjunath S K on 12 January, 2024

SMT. ANUSHA L, ADVOCATE FOR
M/S BALAJI ASSOCIATES, ADVS.,)

AND:

SRI. MANJUNATH S K
S/O SRI. S. R. KRISHNAMURTHY,
AGED 42 YEARS

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NC: 2024:KHC:2207
RPFC No. 81 of 2023

R/AT NO. 1973, MODEL COLONY
5TH CROSS, T DASARAHALLI
BANGALORE - 560 057

ALSO AT
SRI MANJUNATH S.K.,
S/O SRI S.R. KRISHNAMURTHY,
AGED 42 YEARS
IT INFRA STRUCTURE SENIOR MANAGER,
EMPLOYEE CODE. 04552Q774
IBM INDIA PVT., LTD.,
EGL MANYATA TECH PARK
"K" BLOCK, BENGALURU

. . . RESPONDENT

THIS RPFC IS FILED UNDER SECTION 19(4) OF FAMILY
COURT ACT AGAINST THE ORDER DATED 24.07.2020 PASSED
IN C.MISC.No.185/2020 ON THE FILE OF THE IV ADDITIONAL
PRINCIPAL FAMILY JUDGE, MYSURU, PARTLY ALLOWING THE
PETITION FILED UNDER SECTION 125(2) FOR MAINTENANCE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed against the order passed on I.A.No.II filed under Section 125(2) of Cr.P.C., being aggrieved in not considering and not granting interim maintenance to petitioner No.1-wife.

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2. The office has raised objection that in view of Section 19(4) of Family Court Act against the interim order, the revision petition is not maintainable.

3. The Family Court vide order dated 24.07.2020 has passed an order on I.A.No.II filed under Section 125(2) of Family Court Act granting only interim maintenance of Rs.20,000/- pm., to petitioner No.2-child, but has not considered the application for interim maintenance to petitioner No.1-wife. The order impugned is an interlocutory order passed on I.A.No.II. As per Section 19(4) of Family Court Act against the interlocutory order, the revision petition is not maintainable.

4. However, considering the records that the petitioners had filed C.Misc.No.185/2020 before the Family Court on 24.02.2020, but till today after lapse of four years, the Family Court has not passed any order on the petition filed by the petitioners. The petitioners are wife NC: 2024:KHC:2207 and child. The maintenance petition is filed on the ground that the respondent has deserted the petitioners.

Therefore, for survival and for getting maintenance, a speedy remedy is provided under Section 125 of Cr.P.C.

5. If these types of petitions are pending for long time as in the present case, then the very object and purpose of enacting Section 125 of Cr.P.C., is defeated. If the Courts delay in disposing of the petitions within a reasonable period of time, then it would frustrate the petitioners and the very object of providing such benevolent provision is of no use. But the Family Court is not sensitive in considering the petitions on merits. Hence, the very object of establishing of Family Court exclusively dealing with family matters in providing effective and speedy remedy goes vain. These types of cases involve human relations aspect and survival in life of wife and children are involved. Therefore, in order to avoid such a miserable life by the wife and children where they are NC: 2024:KHC:2207 deserted by the husband and for sustaining in life, such a speedy remedy is provided under Section 125 of Cr.P.C.

These are all not considered by the Family Court. For one or other reason, the petition is pending for more than four years since 24.02.2020. Taking long period of four years is nothing, but insensitiveness on the part of the Family Court.

6. Therefore, the Family Court is hereby directed to dispose of the instant petition within a period of three months from the date of receipt of copy of this order. Both the parties shall co-operate with the Family Court for early disposal as directed above.

7. It is common experience of the Court that wherever petitions are filed under Section 125 of Cr.P.C., for seeking maintenance basically involves question of survival in the society, but the petitions are being delayed in the Family Courts across the State. Therefore, NC: 2024:KHC:2207 considering the principles of law laid down by the Hon'ble Apex Court in the catena of decisions where it is held that speedy trial/enquiry is the fundamental rights of the parties as envisaged under Article 21 of the Constitution of India.

8. The object and reasons of Section 125 of Cr.P.C., is a beneficial legislation providing social security to the destitute. To achieve the aspirations of Preamble and Part IV of Directive Principles of State Policy of Constitution of India, Section 125 is the remedy to achieve social justice. Sustaining life in the society does not mean mere animal existence, but to live with dignity even at minimum level of income. When the wife, children, father and mother have become destitute, the survival in the society is paramount thing and getting means by maintenance cannot be stretched for too long period. At the very moment they become destitute from that day onwards their struggle starts to survive in the society. The NC: 2024:KHC:2207 hungry of stomach cannot wait till the order of granting maintenance. Therefore, under this plight of destitute, the Court must have been sensitive in keeping in mind the object and reasons provided under Section 125 of Cr.P.C.

The Family Court should not be oblivious to this benevolent legislation. Therefore, the Hon'ble Supreme Court time and again was pleased to issue guidelines, which are mandatory to be followed by all the Courts in the Country. The Hon'ble Supreme Court in the case of Bhuwan Mohan Singh Vs. Meena and Others¹ were pleased to observe at paragraph Nos.7, 8, 9, 10, 11, 12 and 13 as follows:

"7. At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In Dukhtar Jahan v. Mohd. Farooq .

16. "... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in Vimala (K.) v. Veeraswamy (K.) , while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3) (2015) 6 SCC 353 NC: 2024:KHC:2207

3. "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife."

9. A two-Judge Bench in Kirtikant D. Vadodaria v. State of Gujarat , while advertizing to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. "... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and

starvation."

10. In Chaturbhuj v. Sita Bai , reiterating the legal position the Court held : (SCC p. 320, para 6)

6. "... Section 125 Cr.P.C is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat ."

11. Recently in Nagendrappa Natikar v. Neelamma , it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in NC: 2024:KHC:2207 a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida , while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus : (SCC p. 170, para

10)

10. "The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith."

13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everstine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to

emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc."

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NC: 2024:KHC:2207

9. Therefore, the Court feels that certain directions are necessary to be issued to the Family Courts to follow the guidelines issued by the Hon'ble Supreme Court in the case of Rajnesh Vs. Neha². The Hon'ble Supreme Court while considering the family law matters under various enactments/statutes and in regard to the petition filed under Section 125 of Cr.P.C., for maintenance, following directions are issued.

PART B "2. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C has remained pending before the courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

AIR 2021 SC 569

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NC: 2024:KHC:2207 Guidelines/Directions on maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that:

"Nothing in this article shall prevent the State from making any special provision for women and children."

5. Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

6. Justice Krishna Iyer, J. in his judgment in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. held that the object of maintenance laws is :

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be

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NC: 2024:KHC:2207 selective in picking out that interpretation out of two alternatives which advances the cause

-- the cause of the derelicts."

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act, 1954 ("SMA"), Section 125 of the Criminal Procedure Code, 1973; and the Protection of Women from Domestic Violence Act, 2005 ("the DV Act") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

xxxx

(d) Section 125 of the Cr.P.C Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 Cr.P.C may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C is predicated on two conditions : (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive

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NC: 2024:KHC:2207 disputes with respect to dissolution of marriage can be determined by a civil court/Family Court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In Bhagwan Dutt v. Kamla Devi the Supreme Court held that under Section 125(1) Cr.P.C only a wife who is "unable to maintain herself"

is entitled to seek maintenance.

The Court held:

"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."

(emphasis supplied) Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs.500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs.500 was done away with by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim

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NC: 2024:KHC:2207 maintenance during the pendency of the petition.

Under Sub-section (2) of Section 125, the court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days from the date of service of notice on the respondent.

The amended Section 125 reads as under:

"125. Order for maintenance of wives, children and parents.

(1) xxxx (2) xxxx (3) xxxx (4) xxxx (5) xxxx In Chaturbhuj v. Sita Bai this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 Cr.P.C is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

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NC: 2024:KHC:2207 Proceedings under Section 125 Cr.P.C are summary in nature. In Bhawan Mohan Singh v. Meena and Ors. this Court held that Section 125 Cr.P.C was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim under Section 125 Cr.P.C came up for consideration in Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr. before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife", to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a precondition for grant of maintenance under Section 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System

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NC: 2024:KHC:2207 published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings under Section 125 Cr.P.C such strict standard of proof is not necessary."

10. The Hon'ble Supreme Court in Rajnesh's case (stated supra) has issued guidelines. The Family Courts are directed to adhere to the guidelines issued in this regard. For determining quantum of maintenance and maintenance amount shall be reasonable and realistic, and avoid either of the two extremes i.e., maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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NC: 2024:KHC:2207

11. This Court in the case of Pratibha Singh Vs. Vineet Kumar³ has issued certain directions to speed up enquiry. Even though, the said judgment is in the context of grant of interim maintenance, but it is applicable to consider the case on merits to pass final order also. At Paragraph No.14, certain directions are issued to dispose of the applications filed for maintenance under Section 24 of the Hindu Marriage Act, 1955 and issued directions to the Family Courts to adhere to the following timeline.

"14. It thus becomes imperative for this Court to issue directions to the concerned courts to adhere to a timeline, in all cases, where I applications are filed for maintenance under section 24 of the Act. The concerned Courts shall adhere to the following timeline:

- a. Notice on the application be issued immediately. Service through E-mail/What's App, shall also be valid service in the eye of law.
- b. The concerned Court shall grant two months to the husband to file his objections to the application filed by the wife seeking interim maintenance under section 24 of the Act.
- c. The wife also should be given the same two months to file statement of assets and liabilities.
- d. On the assets and liabilities so filed by the wife, the concerned Court shall consider the 2023 SCC Online Kar 128

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NC: 2024:KHC:2207 contentions of the parties, hear them and pass appropriate orders, within four months thereafter, if not earlier.

- e. Therefore, the outer limit to decide any application seeking interim maintenance is six months from the date of its filing.
- f. To achieve this timeline, the concerned Court should refrain itself from granting unnecessary adjournments to both the husband and the wife.
- g. If the husband or the wife would not co-operate with the closure of the proceedings qua the application for interim maintenance the Court would be free to pass appropriate orders in accordance with law.
- h. Any delay beyond six months should be only on reasons recorded in writing in the order that would be passed.

It is made clear that the concerned Courts shall adhere to the aforesaid timeline, as the wife should not be made to wait for years together, to get certain amount of maintenance from the hands of the husband. In many a case, the wife would be driven to penury, the moment she walks out of the matrimonial house on manifold reasons. To avoid the wife being driven to such impecuniosities, the aforesaid timeline should be strictly followed."

12. Therefore, as per the judgment of the Hon'ble Supreme Court in Rajnesh's case and judgment of this Court in Pratibha's case, the timeline for considering the

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NC: 2024:KHC:2207 interim maintenance application is six months from the date of institution of the petition.

13. When the petition is filed for certain maintenance under Section 125 of Cr.P.C., and for similar relief, any applications or petitions filed under other statutes, it is directed to the Family Courts to insist the petitioner and respondent to file affidavit of assets, income and liabilities as per the format stated in Enclosures I and II stated in Rajnesh's case. Both the petitioner and respondent shall file affidavit as per the dictum of Hon'ble Supreme Court.

Further certain directions are issued as follows:

14. The petitioner shall file such affidavit within a period of one month from the date of institution of the petition. The respondent shall file such affidavit within a period of one month from the date of receipt of notice in the petition.

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NC: 2024:KHC:2207

15. The proceeding under Section 125 of Cr.P.C., is a summary proceeding in nature and strict rules of evidence are not applicable. The principle of natural justice shall be followed while adjudicating the petition. The petitioner shall complete the evidence within a period of one month from the date of appearance of the respondent or deemed appearance or when the respondent placed ex parte. Soon after completion of evidence of the petitioner, the respondent shall complete his side evidences within a period of one month from the date of completion of evidence of the petitioner.

16. After completion of evidence by both the sides, then within 15 days from such date, argument shall be heard and after completion of argument within 15 days final order shall be delivered in accordance with law.

17. The Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005 (hereinafter referred to as "Rules, 2005" for short) mandates on the Courts of the

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NC: 2024:KHC:2207 District Judiciary to make endeavour to dispose of the cases in the time bound manner according to categorization of cases as Track-I, Track-II, Track-III and Trade-IV as stated in Rule 3 of the Rules, 2005.

18. The Presiding Officer of the Court shall categorize the cases pending before him into four tracks and put every effort and make endeavour to dispose of the cases within the timeline stated in Rule 3 of the Rules, 2005.

19. Rule 3 of Rules, 2005, stipulates as follows:

"3. Categorisation of suits and other proceedings:- (1) The Presiding Officer of the Court shall categorise the suits and proceedings in his Court into Track-I, Track-II, Track-III and Track-IV.

a) Track-I: (1) Maintenance, (2) Child Custody, (3) Appointment of guardian and wards, (4) Visiting Rights, (5) Letters of Administration (6) Succession Certificate, (7) Recovery of Rent, (8) Permanent injunction.

b) Track -II: (1) Execution cases, (2) Divorce, (3) Ejectment.

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NC: 2024:KHC:2207

c) Track -III: (1) Partition, (2) Declaration, (3) Specific performance, (4) Possession, (5) Mandatory Injunction, (6) Appeals, (7) Damages, (8) Easements, (9) Trademarks Copy Rights Patents, (10) Intellectual Property Rights.

d) Track- IV: Such other matters not included in Track- I to III shall in Track -IV (2) The Presiding Officer shall endeavour to dispose of the cases in Track-I within 9 months, the cases in Track-II within 12 months and the cases in Track-III and IV within 24 months from the date of appearance or deemed appearance of defendant-respondent. Note: The time prescribed for disposal of the suit/proceeding is the maximum time limit. (3) The Presiding Officer at the request of the parties and for valid reason can dispose of the cases early, irrespective of the Track norms prescribed."

20. The cases pertaining to grant of maintenance, child custody, appointment of guardian and wards, visiting rights, letters of administration, succession certificate, recovery of rent and permanent injunction are made to come under Track-I and the cases coming under Track-I shall be disposed of within nine months from the date of appearance or deemed appearance of the defendants and respondents. Therefore, it is hereby directed to all the

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NC: 2024:KHC:2207 Family Courts in the State to dispose of the cases relating to family laws as categorized under Track-I within nine months from the date of appearance or deemed appearance of defendants and respondents.

Re: striking off defence:

21. The Hon'ble Supreme Court in Rajnesh's case has issued guidelines regarding striking off defence of the husband in case the husband fails to comply with the order passed for granting interim maintenance and cost of litigations. In case, the respondent-husband uses any dilatory tactics in causing delay in the proceeding and fails to comply to the directions of granting interim maintenance and cost of litigations during pendency of the proceedings shall strike off the defence of husband. Then the Family Court shall go on with the proceedings and dispose of the petition within a timeline as stated in Rules, 2005.

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NC: 2024:KHC:2207

22. The Registrar General is directed to circulate this order to all the Family Courts and to all the Courts in District Judiciary in the State.

Accordingly, petition is disposed of.

In view of disposal of the petition, I.As., if any, do not survive for consideration and are disposed of.

In the instant case, the Family Court is directed to dispose of the matter within three months from the date of receipt of copy of this order. Both the parties shall co-operate with the Family Court for early disposal as directed above.

Sd/-

JUDGE PB

Smt. Shamala @ G Shyamala Bai vs The State Of Karnataka on 12 January, 2024

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NC: 2024:KHC:1856
CRL.P No. 6844 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM
CRIMINAL PETITION NO. 6844 OF 2021
BETWEEN:

1. SMT. SHAMALA @ G SHYAMALA BAI
W/O ANANTHA RAO
D/O LATE S GOPALA KRISHNA
AGED 46 YEARS
2. SRI MOHAN RAO @ MOHAN RAO
S/O ANANTHA RAO
AGED 22 YEARS

BOTH ARE R/AT NO.7,
4TH B CROSS, KANAKANAGAR,
SULTHAN PALYA, BENGALURU CITY
BENGALURU - 560 032

Digitally signed by ALBHAGYA (BY SRI. SRINIVASA T, ADVOCATE) ...PETITIONERS

Location: AND:

HIGH
COURT OF
KARNATAKA

1. THE STATE OF KARNATAKA
REPRESENTED BY SUB-INSPECTOR
STATE BY SHO BASAVANAGUDI WOMEN POLICE
STATION, BENGALURU - 70
2. SMT. NALINI BAI S
W/O SHAM RAO,
D/O SHIVAJI RAO
AGED 37 YEARS

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NC: 2024:KHC:1856
CRL.P No. 6844 of 2021

R/AT 87, OLD POST OFFICE ROAD
2ND MAIN, 2ND BLOCK,
NEAR LAKSHMI VENKATESHWARA TEMPLE,
THYAGARAJANAGARA
BENGALURU - 560 028

... RESPONDENTS

(BY SRI.VENKATA SATYANARAYANA, HCGP FOR R1;
SRI.AJAY KADKOL, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE ADVOCATE
FOR THE PETITIONER PRAYING TO QUASH THE ENTIRE
PROCEEDINGS WHICH IS REGISTERED BY THE RESPONDENT
NO.1, BASAVANAGUDI WOMEN POLICE STATION, BENGALURU
ON THE FILE OF HONBLE XXXVII ADDL.C.M.M., BENGALURU IN
C.C.NO.21871/2019 FOR THE OFFENCE P/U/S 498A R/W 34 OF
IPC AND SECTION 3,4,6 OF DOWRY PROHIBITION ACT
AGAINST THE PETITIONERS.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed by in-laws of defacto complainant/respondent No.2 seeking quashing of the proceedings pending in C.C.No.21871/2019 for the NC: 2024:KHC:1856 offences punishable under Section 498A read with Section 34 of IPC and Sections 3, 4 and 6 of Dowry Prohibition Act.

2. Learned counsel for the petitioners placing reliance on the judgment rendered by the coordinate Bench rendered in Crl.P.No.4325/2022 would bring to the notice of this Court that the proceedings are already quashed against the husband of respondent No.2 who is none other than the son of petitioners herein. If the proceedings for the offences punishable under Section 498(A), 506 read with 34 of IPC and Sections 3, 4, and 6 of Dowry Prohibition Act are already quashed against the husband, he would contend that the captioned petition deserves to be allowed and the proceedings are liable to be quashed even against the petitioners herein.

3. Heard learned counsel for the petitioners and learned counsel appearing for the defacto complainant and learned HCGP.

4. Para 6 and 7 of the judgment rendered by the coordinate Bench while quashing the proceedings against NC: 2024:KHC:1856 the petitioner would be relevant and the same reads as under:

"6. The marriage of the accused No.1 with the defacto complainant was solemnized on 15.4.2007. The defacto complainant had filed a petition under Section 12 of the Protection of Women From Domestic Violence Act in the year 2015 seeking maintenance from the accused No.1, however, the same was dismissed as withdrawn. Thereafter, the petitioner-accused No.1 filed a petition in MC No.4583/2018 under Section 13(1)(ia) of the Hindu Marriage Act for dissolving his marriage on the ground of cruelty, and the defacto complainant entered appearance on 11.12.2018. After appearing in the proceeding initiated by the accused No.1 for dissolving the marriage, the defacto complainant lodged the FIR, which clearly implies that, the FIR was lodged to falsely implicate the petitioner-accused No.1, and to circumvent the petitioner from proceeding with the dissolving his marriage. The FIR was lodged suppressing the pendency of the petition for dissolving the marriage, and also withdrawal of the petition filed under Section 12 of the Protection of Women From Domestic Violence Act.

7. The dispute between the parties arises out of marital discord, however, given criminal texture NC: 2024:KHC:1856 Hence, the continuation of criminal proceeding will be an abuse of the process of law. Accordingly, I pass the following:

ORDER

i) Criminal petition is allowed.

ii) The impugned proceeding in CC No.21871/2019 arising out of Crime No.124/2019 pending on the file of the learned XXXVII Additional Chief Metropolitan Magistrate, Bengaluru, insofar as it relates to the petitioner-accused No.1 is hereby quashed."

5. In the light of the findings recorded by the coordinate Bench while quashing the proceedings against the husband, the proceedings for the above said offences against the in-laws of respondent No.2 is also liable to be quashed.

6. Accordingly, I pass the following:

ORDER

(i) The Criminal petition is allowed;

NC: 2024:KHC:1856

(ii) The proceedings pending in C.C.No.21871/2019 on the file of the learned XXXVII Additional Chief Metropolitan Magistrate, Bengaluru, insofar as it relates to petitioners/accused Nos.2 and 3 are concerned, are hereby quashed.

Sd/-

JUDGE CA

Maruti S/O Tippanna Kattimani vs Smt. Premakka W/O. Maruti Kattimani on 9 January, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

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NC: 2024:KHC-D:444
CRL.RP No. 100034 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 9TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE S.VISHWAJITH SHETTY
CRIMINAL REVISION PETITION NO. 100034 OF 2022

BETWEEN:

MARUTI S/O. TIPPMANNA KATTIMANI,
AGED ABOUT 57 YEARS,
OCC. GOVT SERVANT,
R/O. KANAVI,
TQ. AND DIST. GADAG-581117.

...PETITIONER
(BY SMT. KAVYA C. SHETTAR, ADVOCATE)

AND:

SMT. PREMAKKA W/O. MARUTI KATTIMANI,
AGE: 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. C/O. RAJU ARIKATTI,
D.C. MILL ROAD,
TALAGERI ONI, GADAG,

Digitally
signed by
VIJAYALAXMI

TQ AND DIST. GADAG-581117.

VIJAYALAXMI M BHAT
M BHAT Date:
2024.01.11
14:58:35

...RESPONDENT

+0530

(BY SRI R. B. CHALLAMARAD, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397
R/W 401 OF CR.P.C., SEEKING TO CALL FOR THE RECORDS,
AND SET ASIDE THE ORDER DATED 10.03.2020 PASSED BY
THE I ADDITIONAL PRINCIPAL FAMILY COURT, GADAG IN CRL.
APPEAL NO.35/2018, DISMISSING THE APPEAL FILED BY THE
PETITIONER AND BY SETTING ASIDE THE ORDER DATED
02.05.2018 PASSED BY THE I ADDITIONAL CIVIL JUDGE AND
JMFC I COURT, GADAG, IN CRL.MISC.NO.78/2016.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:444
CRL.RP No. 100034 of 2022

ORDER

Petitioner who is working as Headmaster in a Government School has filed this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 assailing the order dated 02.05.2018 passed by the Court of I Additional Civil Judge and JMFC-I Court, Gadag in Criminal Miscellaneous No.78/2016 and the order dated 10.03.2020 passed by the I Additional Principal Family Court, Gadag in Criminal Appeal No.35/2018.

2. Heard the learned counsel for the parties.

3. The respondent who claims to be the wife of petitioner herein had filed Criminal Miscellaneous No.78/2016 before the Court of I Additional Civil Judge and JMFC-I Court, Gadag under Section 9(b) and 37(2)c of the Protection of Women from Domestic Violence Act, 2005 seeking several reliefs. The petitioner who had entered appearance in the said proceedings had filed statement of objections denying that the respondent is his legally wedded wife. He also had stated that he was married to Smt.Bhagyalaxmi on 11.07.1987 and from the said wedlock, they have three children. Before the NC: 2024:KHC-D:444 Trial Court, the respondent in support of her case had examined herself as P.W.1 and got marked 18 documents as Ex.P.1 to 18. The petitioner herein had got himself examined as R.W.1 and had got marked 21 documents as Ex.P.R.1 to Ex.P.R.21. The Trial Court vide its order dated 02.05.2018 had partly allowed the respondent's petition and had awarded a sum of Rs.2,00,000/- as compensation to her. The petitioner herein had unsuccessfully challenged the said order in Criminal Appeal No.35/2018 before the Principal Family Court, Gadag, which was dismissed on 10.03.2020. Therefore, he is before this Court.

4. Learned counsel for the petitioner submits that the Courts below have failed to appreciate that the respondent is not the legally wedded wife of the petitioner. She submits that the petitioner has married Smt.Bhagyalaxmi and from the said wedlock the couple have three children.

5. The material on record would go to show that respondent herein had earlier filed Criminal Miscellaneous No.150/2015 before the jurisdictional Family Court seeking maintenance from the petitioner. In the said proceedings, NC: 2024:KHC-D:444 the learned Judge of the Family Court had awarded maintenance amount of Rs.3,000/- in favour of the respondent. In the said proceedings, having regard to the rival contentions, the Family Court had considered the issue "as to whether the petitioner proves that the petitioner is the legally wedded wife of the respondent". The said issue was answered in the affirmative and a finding was recorded that the respondent herein is the legally wedded wife of the petitioner herein. Undisputedly, the said finding has attained finality.

6. It is also brought to the notice of this Court that the petitioner has filed proceedings before the jurisdictional Family Court at Gadag against the respondent herein under Section 13(1)(ia) (1b) of the Hindu Marriage Act, 1955 seeking dissolution of his marriage with the respondent by a decree of divorce. Therefore, it is not open for the petitioner now to contend before this Court that the respondent is not his legally wedded wife. Undisputedly, the petitioner is a Government servant and he is working as a Headmaster in the Government School and before the Trial Court the NC: 2024:KHC-D:444 petitioner had admitted that he is drawing a salary of Rs.48,000/-. The said salary would have been revised substantially as on this date. Under the circumstances, I am of the view that the order passed by the Trial Court which is confirmed by the Family Court directing the petitioner herein to pay compensation of Rs.2,00,000/- to the respondent cannot be said to be on the higher side and therefore no interference is called for, as against the said orders. Therefore, I see no merit in the revision petition, accordingly, same is dismissed.

I.A.No.1/2022 does not survive for consideration in view of disposal of the revision petition.

Sd/-

JUDGE CKK

Sri. D M Vijay vs Smt. M Vasanta Lakshmi @ Umavati on 9 January, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:1003
WP No. 23388 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
WRIT PETITION NO. 23388 OF 2023 (GM-RES)
BETWEEN:

SRI. D.M.VIJAY,
AGED ABOUT 52 YEARS,
S/O LATE MADE GOWDA,
R/A NO.113, FIRST FLOOR,
BENAKA NILAYA, 2ND CROSS,
RENUKAMBA TEMPLE STREET,
DODDABOMMASANDRA,
BENGALURU - 560 097.
ALSO AT: NO.1, SHIVARAKSHA,
NEAR CHAMUNDI TEMPLE,
DODDABOMMASANDRA,
BENGALURU - 560 097.

...PETITIONER
(BY SRI. SATYANARAYANA CHALKE S., ADVOCATE)

AND:

Digitally signed
by SUCHITRA M J
Location: High Court of Karnataka
SMT. M VASANTA LAKSHMI @ UMAVATI,
AGED ABOUT 41 YEARS,
R/AT NO.5, LAKSMIPRIYA NILAYA,
VINAYAKANAGAR, KATRIGUPPE MAIN ROAD,
VIDYAPEETA, BENGALURU - 560 050.
ALSO AT: NO.53, 2ND CROSS,
LAKSHMI VENKATESHWARA NILAYA,
NEW POLICE STATION ROAD,

R K MUTT, GAVIPURAM,
GUTTAHALLI, KEMPEGOWDA NAGAR,
BENGALURU - 560 019.

... RESPONDENT

(BY SRI. CHANDAN B.K., ADVOCATE FOR
SRI. B. SIDDESWARA., ADVOCATE)

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NC: 2024:KHC:1003
WP No. 23388 of 2023

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C.
PRAYING TO SET ASIDE/QUASH THE ORDER IN CRL.A.NO.943/2023,
DATED 08.09.2023, ANNEXURE-B1, PASSED BY THE LEARNED LXVI
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU AND
ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

This writ petition is filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., challenging the order of dismissal of stay application filed before the First Appellate Court in Crl.A.No.943/2023 by the petitioner for staying the order of granting maintenance to respondent-wife and his daughter.

2. Heard arguments of learned counsel for the petitioner and learned counsel for the respondent.
3. The case of the petitioner is that the petitioner is said to be the husband of respondent and from their wedlock they have one daughter named as Dhanusha. Since there was family dispute between the parties, the respondent filed a case against the petitioner for restitution of conjugal rights in M.C.No.1274/2006. After recording evidence, the learned NC: 2024:KHC:1003 Magistrate passed the order by granting maintenance, directed the petitioner to pay Rs.10,000/- per month to respondent-wife and Rs.5,000/- per month to the female child from the date of petition till she attains majority.
4. Feeling aggrieved by the judgment dated 03.06.2023 passed by the learned Magistrate, the petitioner approached the Sessions Judge under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.Act'). Along with the appeal, he has also filed I.A.No.1 for staying the judgment dated 03.06.2023 passed by the learned Magistrate. Whereas, the First Appellate Court after hearing, dismissed the said application. Further, learned counsel for the petitioner contended that daughter of the petitioner has already attained majority and divorce has been granted by the Family Court, which is challenged before the High Court. He further contends

that the First Appellate Court erred in staying the order passed by the learned Magistrate.

5. Per contra, learned counsel for the respondent contended that there is arrears of maintenance more than Rs.19,80,000/- payable by the petitioner and this Court NC: 2024:KHC:1003 granted interim order directing the petitioner to deposit 50% of the arrears of maintenance before the trial Court but he has deposited Rs.5,00,000/- not 50% as ordered by this Court.

6. Having heard the arguments and perusing the records, of course the petitioner may have good grounds for acquittal; the First Appellate Court passed the order after conclusion of the proceedings against the petitioner. The First Appellate Court is having power of staying the proceedings by imposing certain conditions. However, the First Appellate Court has not exercised its power by staying the order of learned Magistrate. However, arrears of maintenance is now calculated and the same is payable more than Rs.20,00,000/- and maintenance required to be paid by the petitioner. However, this Court passed order to deposit 50% of the arrears of maintenance while staying the order under challenge.

7. Considering the facts and circumstances of the case, when the daughter of petitioner has already attained majority about five years back, though the petitioner's counsel submits that he has paid some amount during the pendency of criminal proceedings before the learned Magistrate but he has NC: 2024:KHC:1003 not produced any document to show whether he has paid any amount towards maintenance or towards education expenses of his daughter. If any amount towards education expenses is paid, the same cannot be calculated in this case. As stated by the respondent's counsel, education expenses has ordered by the High Court in divorce petition. Such being the case, that amount cannot be considered and deducted in this case. Therefore, the contention of the petitioner's counsel is that he has to deposit 50% amount and that amount cannot be deducted in this case. Therefore, considering the facts and circumstances of the case, I am of the view that the First Appellate Court ought to have exercised its discretionary power by staying proceedings by imposing condition to deposit certain amount, but not passed. Hence, the following:

ORDER

1) Writ Petition is allowed in part.

2) Order dated 08.09.2023 passed by the LXVI Additional City Civil and Sessions Judge, Bengaluru (First Appellate Court) is set aside and application under Section 29 of D.V.Act filed by the petitioner is allowed.

NC: 2024:KHC:1003

3) Order dated 03.06.2023 on the file of learned Metropolitan Magistrate, Traffic Court-V, Bengaluru, is hereby stayed until disposal of the appeal in Crl.A.No.943/2023 by the First Appellate Court subject to condition that the petitioner to deposit 50% of arrears of maintenance awarded to both wife and daughter excluding any amount already deposited towards education expenses to the daughter within a week from the date of receipt of a copy of this order. The petitioner shall

continuously pay 50% maintenance to both wife and daughter until disposal of the appeal.

4) If any application is filed by the respondent praying to release the amount, the First Appellate Court may release the amount to the respondent.

Sd/-

JUDGE SMJ

Shantappa S/O Thanu Rathod vs The State Of Karnataka And Anr on 8 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:257
CRL.P No. 200774 of 2022

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO. 200774 OF 2022 (482)
BETWEEN:

SHANTAPPA S/O THANU RATHOD,
AGE: 43 YEARS, OCC: PRIVATE SERVICE,
R/O. KONNUR TANDA,
TQ. JEWARGI,
DIST. KALABURAGI- 586 102.

...PETITIONER
(BY SRI R. S. LAGALI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH THE SHO,

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA
BASAVANA- BAGEWADI P.S.,
REP. BY THE ADDL. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
KALABURAGI- 585102.

2. JANAKKA
W/O. SHANTAPPA RATHOD,
AGE: 35 YEARS, OCC: HOUSEHOLD WORK,
R/O. SANKANAL LT,

TQ. BASAVANA- BAGEWADI,
DIST. VIJAYAPURA- 586 203.

. . . RESPONDENTS

(BY SMT. ANITA M. REDDY, HCGP FOR R1;
SRI MAHADEV S. PATIL, ADVOCATE FOR R2)

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NC: 2024:KHC-K:257
CRL.P No. 200774 of 2022

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO ALLOW THIS CRIMINAL PETITION AND THEREBY QUASH THE ORDER OF TAKING COGNIZANCE AND ISSUE OF PROCESS DATED 31.08.2018 IN CRIMINAL CASE NO.495/2019 (ARISING OUT OF BASAVANA-BAGEWADI NO.199/2018) BY THE HON'BLE SENIOR CIVIL JUDGE AND JMFC, BASAVANA -BAGEWADI FOR THE OFFENCE PUNISHABLE U/SEC. 323, 341, 504 AND 506 OF IPC AGAINST THE PETITIONER.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. for quashment of the order of taking cognizance and issuance of process dated 31.08.2018 in C.C.No.495/2019, arising out of Crime No.199/2018 of Basavana Bagewadi police station, pending on the file of the Senior Civil Judge and JMFC, Basavana Bagewadi, registered for the offences punishable under Sections 323, 341, 504 and 506 of IPC.

2. It is the case of the prosecution that the complainant i.e., respondent No.2 herein is the wife of the petitioner and their marriage was solemnized four years prior to the alleged incident. It is further contention of the prosecution that there were certain matrimonial discord between the petitioner and respondent No.2 and as such, NC: 2024:KHC-K:257 respondent No.2 has taken shelter in her parental house and filed a maintenance petition. It is alleged that by taking this as an issue, on 30.06.2018, in front of a degree college of Basavana Bagewadi, the petitioner has picked up quarrel with respondent No.2 in respect of filing of the maintenance petition and assaulted her by hands, kicked her, causing simple injuries and also abused and threatened her and in this regard a complaint came to be lodged. On the basis of the complaint, the Investigating Officer has investigated the crime and submitted the charge sheet against the petitioner herein.

3. The learned Magistrate has taken cognizance of the offences vide order dated 31.08.2018 and issued the process. Thereafter, the petitioner was also enlarged on bail. Subsequently, the matter was set down for hearing before charge and in the year 2022, the petitioner has filed this petition for quashment of the said proceedings.

NC: 2024:KHC-K:257

4. Heard the arguments advanced by the learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1 - State and the learned counsel for respondent No2. Perused the records.

5. The learned counsel for the petitioner would contend that the relationship between the parties is admitted and in order to overcome the decree for a restitution of conjugal rights, this complaint came to be lodged. He has also invited the attention of the Court by contending that the petitioner is suffering from 75% of permanent disability and hence, he would contend that the complaint is filed only to harass the petitioner. As such, he would seek for quashment of the proceedings.

6. Per contra, learned High Court Government Pleader for respondent No.1 and the counsel for respondent No.2 would contend that the complaint was filed one year after an exparte decree passed in a petition for restitution of conjugal rights and a maintenance order was also passed in favour of respondent No.2 herein. With NC: 2024:KHC-K:257 this vengeance, the petitioner has committed the alleged offences and he is a highly qualified person and in order to overcome the payment of maintenance awarded in favour of respondent No.2, this petition is filed. Hence, they sought for rejection of the petition.

7. Having heard the arguments and perusing the records, the allegations disclose that the alleged offences said to have taken place on 30.06.2018. Admittedly, the marriage was solemnized on 02.07.2018 between the petitioner and respondent No.2. The allegations further disclose that there are certain matrimonial disputes between the parties and respondent No.2 has taken shelter in her parental house. It is evident from the records produced by the petitioner that he has filed a petition for restitution of conjugal rights in M.C.No.164/2016 and the same came to be allowed by granting a decree of restitution of conjugal rights.

8. The records further disclose that the petitioner has also filed a petition under Section 7 of the Guardian NC: 2024:KHC-K:257 and Wards Act for custody of the child. The said matter is still pending. The records also disclose that respondent No.2 has also initiated the proceedings in Criminal Misc.No.302/2019 for maintenance and maintenance was awarded in her favour. The said petition was under

Section 12 of the Protection of Women from Domestic Violence Act, 2005, making the allegations regarding domestic violence. Considering these aspects, there is material evidence to show that the relationship between the parties is strained. Apart from this, the allegations made in the case are one year subsequent of decree for restitution of conjugal rights. Further, the order sheet in the criminal case discloses that the learned Magistrate has taken cognizance of the offences on 31.08.2018 itself and later on, the petitioner appeared on 05.11.2018 and was enlarged on bail. The matter was kept for hearing before charge, but, in the year 2022, the petitioner has filed the present petition for quashment of the proceedings. This delay on the part of the petitioner clearly discloses his intention. Merely the petitioner is a handicapped person, NC: 2024:KHC-K:257 cannot be presumed that he is an innocent person. The charge sheet material discloses that there are eyewitnesses and it is supported by the

medical records. All these facts are required to be tested only during the course of trial. As such, petition being devoid of any merits, does not survive for consideration. Accordingly, I proceed to pass the following:

ORDER The petition stands dismissed. In view of disposal of the main petition, pending application does not survive for consideration and the same is dismissed.

Sd/-

JUDGE SRT

Sri. Basavaraj S/O Mahadevayy ... vs Smt. Sangeeta W/O. Basavaraj ... on 8 January, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

-1-

NC: 2024:KHC-D:355
CRL.RP No. 100286 of 2021

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE S.VISHWAJITH SHETTY
CRIMINAL REVISION PETITION NO. 100286 OF 2021
BETWEEN:

SRI BASAVARAJ
S/O. MAHADEVAYYA VIRAKTAMATH,
AGE: 53 YEARS, OCC. AGRICULTURE,
R/O. HANABARATTI VILLAGE,
C/O. BUDIHAL, TQ. BAILHONGAL-591121.

...PETITIONER
(BY SRI HARSHAWARDHAN M. PATIL, ADVOCATE)

AND:

1. SMT. SANGEETA
W/O. BASAVARAJ VIRAKTAMATH,
AGE: 42 YEARS, OCC. HOUSEHOLD WORK,
2. KUMARI RAJASHREE
D/O. BASAVARAJ VIRAKTAMATH,
AGE: 22 YEARS, OCC. HOUSEHOLD WORK,

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signed by
VIJAYALAXMI
VIJAYALAXMI M BHAT
M BHAT Date:
2024.01.10
16:27:02

BOTH ARE R/O. HANABARATTI VILLAGE,
TQ. BAILHONGAL, C/O. BUDIHAL,
DIST. BELAGAVI-591121.

... RESPONDENTS
(BY SRI IRANAGOUDA K. KABBUR, ADVOCATE FOR R1 AND R2)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W SECTION 401 OF CR.P.C., SEEKING TO SET ASIDE THE JUDGMENT IN CRIMINAL APPEAL NO. 8/2020 DATED. 07.09.2021, PASSED BY THE V ADDL DISTRICT AND SESSIONS JUDGE, BELAGAVI, AND THEIR BY SET ASIDE JUDGMENT IN CRIMINAL MISC NO. 508/2015 DATED. 07.12.2019 PASSED BY ADDL CIVIL JUDGE AND JMFC, BAILHONGAL.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

-2-

NC: 2024:KHC-D:355
CRL.RP No. 100286 of 2021

ORDER

1. This revision petition under Section 397 r/w 401 of Cr.P.C., is filed assailing the order dated 07.12.2019 passed by the Court of Additional Civil Judge and JMFC, Bailhongal in Crl.Misc.(D.V.Act).No.508/2015 and the judgment and order dated 07.09.2021 passed by the Court of V Additional District and Sessions Judge, Belgavi, in Crl.A.No.8/2020.

2. Heard the learned counsel for the parties.

3. Facts leading to filing of this revision petition as revealed from the records are, the marriage of the petitioner with the first respondent herein was solemnized in the year 1996 at Hanabaratti village, Bailhongal taluk as per the customs that prevailed in their community. From the wedlock, the couple have a daughter who is arraigned as respondent no.2 in the present petition. The relationship between the couple got strained subsequently. Therefore, the first respondent along with respondent no.2 has deserted the company of the petitioner and had taken NC: 2024:KHC-D:355 shelter in her parents house.

Crl.Misc.(D.V.Act).No.508/2015 was filed by the respondents herein before the jurisdictional Court of Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking several reliefs. The prayer made in the application was opposed by the petitioner herein by filing statement of objection.

4. Before the trial Court, the first respondent had examined herself as PW1 and in support of her case, she had marked Exs.P1 to P6 which are the record of rights of the agricultural property belonging to the petitioner herein. In support of his case the petitioner herein had examined himself as RW1 and another witness was examined as RW2. He also got two documents marked in support of his case as Exs.R1 and R2. The trial Court vide order dated 07.12.2019, partly allowed the petition

filed by the respondents herein. The said order was challenged by the petitioner herein in Crl.A.no.8/2020 before the Court of V Additional District and Sessions Judge, NC: 2024:KHC-D:355 Belgaum, which was dismissed on 07.09.2021. Therefore, he is before this court.

5. The learned counsel for the petitioner submits that the Courts below were not justified in awarding maintenance to the respondents. The evidence placed before the Court was not properly appreciated. The respondents have voluntarily left the company of the petitioner and therefore, they are not entitled for maintenance.

6. Per contra, the learned counsel for the respondents has argued in support of the impugned orders. He submits that after the petitioner had contracted the second marriage, the first respondent had left his company. He owns 20 acres of agricultural land and the same is evident from Exs.P1 to P6. Accordingly, prays to dismiss the petition.

7. The relationship between the parties is not in dispute. The first respondent herein is the wife of the petitioner and the second respondent is the daughter of NC: 2024:KHC-D:355 the couple. The petitioner has a duty and responsibility to take care of the respondents and provide them proper maintenance. Exs.P1 to P6 are the records of right in respect of agricultural properties which stand in the joint name of petitioner and his family members. After the first respondent had started residing with her parents, undisputedly, the petitioner has not provided any maintenance to her and to the daughter born to them. Section 20 of the Act provides for granting maintenance to the estranged wife or aggrieved person. The trial Court after taking into consideration the oral and documentary evidence available on record has awarded maintenance amount of Rs.2,500/- per month to respondent no.1 and Rs.1,500/- per month to respondent No.2. The said amount cannot be said to be on the higher side taking into consideration the present cost of living. The Courts below have concurrently held against the petitioner and I do not find any good reason to interfere with the impugned order passed by the Courts below wherein only a sum of Rs.2,500/- p.m. has been awarded to respondent no.1 and NC: 2024:KHC-D:355 Rs.1,500/- to respondent no.2. Therefore, I am of the view that the petition lacks merits. Accordingly, the same is dismissed.

Sd/-

JUDGE VMB

Praveen E.G. And Ors vs Smt Preeti W/O Praveen on 5 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

-1-

NC: 2024:KHC-K:216
CRL.P No. 201190 of 2022

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 5TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO. 201190 OF 2022 (482)
BETWEEN:

1. PRAVEEN E.G.
S/O E. M. GEORGE,
AGE: 40 YEARS, OCC: PVT. SERVICE,
R/O. MULLAGUDDE HOUSE,
JANTA COLONY, ARVA ALADANGADI POST,
BELTANGADI TALUKA,
DAKSHINA KANNADA.
2. E. M. GEORGE
S/O. MATHEW,
AGE: 69 YEARS, OCC: COOLIE,
R/O. MULLAGUDDE HOUSE,
JANTA COLONY, ARVA ALADANGADI POST,
BELTANGADI TALUKA,
DAKSHINA KANNADA.
3. MAKATALIN PINTO
W/O E. M. GEORGE,
AGE: 60 YEARS, OCC: HOUSEWIFE,
R/O. MULLAGUDDE HOUSE, JANTA COLONY,
ARVA ALADANGADI POST,
BELTANGADI TALUKA,

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

DAKSHINA KANNADA.

4. E. G. PRASHANT
S/O. E. M. GEORGE,
AGE: 38 YEARS, OCC: PVT. WORKS,
R/O. MULLAGUDDE HOUSE,

-2-

NC: 2024:KHC-K:216
CRL.P No. 201190 of 2022

JANTA COLONY, ARVA ALADANGADI POST,
BELTANGADI TALUKA,
DAKSHINA KANNADA.

5. BABITA W/O. CHANDRAKANT,
AGE: 36 YEARS, OCC: TEACHER,
R/O. JANTA COLONY, ARVA ALADANGADI POST,
BELTANGADI TALUKA,
DAKSHINA KANNADA.

...PETITIONERS

(BY SRI VARUN PATIL, ADVOCATE FOR
SRI SHIVANAND PATIL, ADVOCATE)

AND:

SMT. PREETI W/O PRAVEEN,
AGE: 33 YEARS, OCC: HOUSEWIFE,
R/O. ALLEGEDLY AT GOVT. QTRS,
RIMS HOSPITAL QTR NO. 18 C BLOCK,
STAFF QTRS, C/O CHINTA STAFF NURSE,
RAICHUR- 584101

...RESPONDENT

(BY SMT. PATIL SHANTABAI SUBHASH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
ALLOW THE PETITION AND QUASH THE ENTIRE CRIMINAL
PROCEEDINGS AGAINST THE PETITIONERS IN
CRL.MISC.NO.671/2022 U/S 12, 18, 20 AND 22 R/W 26 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT
2005 AND PENDING ON THE FILE OF PRINCIPAL CIVIL JUDGE
AND JMFC RAICHUR, AND ALSO GRANT SUCH OTHER RELIEF'S
AS THIS HON'BLE COURT DEEMS FIT.

THIS PETITION COMING ON FOR FINAL HEARING, THIS
DAY, THE COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC-K:216

ORDER

The petitioners have filed this petition under Section 482 of Cr.P.C. seeking quashment of the proceedings in Criminal Misc.No.671/2022 filed under Sections 12, 18, 20 and 22 read with Section 26 of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'), pending on the file of the learned Principal Civil Judge and JMFC, Raichur (for short 'Trial Court').

2. The respondent claims to be the legally wedded wife of petitioner No.1. Petitioner Nos.2 and 3 are the in-laws of the respondent, petitioner No.4 is her brother-in-law while petitioner No.5 is her sister-in-law. It is alleged that the respondent is legally wedded wife of petitioner No.1 and their marriage was solemnized on 31.12.2016 and it is alleged that she has subjected to ill-treatment and hence, she claims to have filed a petition under the provisions of the D.V. Act. The filing of the said petition is being challenged before this Court in this petition.

NC: 2024:KHC-K:216

3. The main contention of the learned counsel for the petitioners is that the respondent has filed a similar petition against present petitioner No.1 before the Mangalore Court and during the pendency of the said petition, now she has filed this petition again by abusing and by implicating petitioner Nos.2 to 5. It is further asserted that other disputes regarding petition being filed for restitution of conjugal rights being pending and by concealing all these aspects, the second petition is filed, which is an abuse of the process of law. Hence, he would seek for quashment of the proceedings initiated before the Trial Court in Crl.Misc.No.671/2022.

4. Per contra, the learned counsel for the respondent would admit that the respondent had filed a petition under the provisions of the D.V. Act before the Mangalore Court, but, she submits that the same was withdrawn on 12.09.2022 by passing a memo on the same day. Hence, she would contend that in view of withdrawal of the petition before the Mangalore Court, there is no bar NC: 2024:KHC-K:216 for her to continue the proceedings before the Raichur Court.

5. Having heard the arguments and perusing the records, it is evident that the petition filed under Section 12 of the D.V. Act before the Mangalore Court is restricted for claiming maintenance and restraining petitioner No.1 herein from committing domestic violence. The present petition is filed against the husband, in-laws and others and there the reliefs under Section 18 of the D.V. Act claiming relief of protection order, maintenance, litigation expenses, return of ornaments etc. along with compensation under Section 22 of the D.V. Act. No doubt, the respondent could have sought all these reliefs in her earlier petition filed before the Mangalore Court in Crl.Misc.No.7/2020, but, no such reliefs were claimed therein. Further, the other petitioners were not implicated in the petition filed before the Mangalore Court. The records further disclose that on 12.09.2022, the respondent herein has filed a memo before Mangalore for withdrawal of the petition on the ground that she has

filed NC: 2024:KHC-K:216 a similar petition before Raichur Court. The memo was filed on 12.09.2022 and on the same day, the petition came to be dismissed. But, Crl.Misc.No.671/2022 is filed on 28.03.2022, which is during the pendency of the petition before Mangalore Court. However, now it is evident that the petition before the Mangalore Court is already withdrawn and there is no bar for continuing the proceedings in Raichur Court.

6. The other contention raised by learned counsel for the petitioners is that petitioner Nos.2 and 3 being aged persons are required to appear regularly before the Criminal Court. The petition is filed under the provisions of the D.V. Act seeking certain reliefs and they are in the form of quasi civil and quasi criminal. The presence of the petitioners is not required regularly before Raichur Court in the proceedings initiated under the provisions of the D.V. Act. The other ground raised regarding intention and non joining of the respondent herein with petitioner No.1 though there is an order of restitution of conjugal rights in NC: 2024:KHC-K:216 favour of petitioner No.1, can be only considered during the course of trial and the petitioners are at liberty to substantiate their defence in the pending proceedings.

7. Considering all these facts and circumstances and subsequent events, question of quashing the proceedings filed under the provisions of the D.V. Act before Raichur Court does not arise at all. Hence, the petition being devoid of any merits and does not survive for consideration. Accordingly, I proceed to pass the following:

ORDER The petition stands dismissed.

Sd/-

JUDGE SRT

Ambujay @ Sagar And Ors vs The State Of Karnataka And Anr on 3 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

- 1 -

NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.201709 OF 2023 (482)

BETWEEN:

1. AMBUJAY @ SAGR
S/O SHRIKANT SURYAVANSHI,
AGE: 32 YEARS, OCC: DRIVER,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.
2. NANDA W/O SHRIKANT SURYAVANSHI,
AGE: 56 YEARS, OCC: HOUSEHOLD,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.
3. SHRIKANT
S/O SHIVARAM SURYAVANSHI,
AGE: 66 YEARS, OCC: RETIRED GOVT. SERVANT,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.

Digitally signed by
SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

4. SACHIN S/O SHRIKANT SURYAVANSHI,
AGE: 34 YEARS, OCC: DRIVER,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.

...PETITIONERS

(BY SMT. JAYASHREE P., ADVOCATE FOR
-2-

NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

SRI RATHOD SUBHASCHANDRA DESU, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH PI VIJAYAPUR WOMEN PS.,
REP. BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
AT KALABURAGI BENCH-585102.
2. SMT. AKSHATA
W/O AMBUJAY @ SAGAR SURYAVANSHI,
AGE: 26 YEARS, OCC: HOUSEHOLD,
R/O M. B. PATIL NAGAR,
NOW AT SANGAMEHSWAR NAGAR,
MUDDEBIHAL,
TQ. MUDDEBIHAL,
DIST. VIJAYAPUR-586212.

...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS OF
VIJAYAPUR WOMEN PS IN CRIME NO.153/2023 AGAINST THE
PETITIONERS FOR THE OFFENCES PUNISHABLE UNDER
SECTIONS 498-A, 323, 504, 506 R/W 34 OF IPC AND SECTION
4 OF THE D.P. ACT, PENDING ON THE FILE OF IV ADDITIONAL
CIVIL JUDGE AND JMFC, VIJAYAPUR IN C.C.NO.4482/2023.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,

THE COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

ORDER

This petition is filed under Section 482 of Cr.P.C. seeking to quash the entire proceedings in C.C.No.4482/2023, pending on the file of IV Additional Civil Judge and JMFC, Vijayapur arising out of Vijayapur Women Police Station, Vijayapur in Crime No.153/2023 for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC and Section 4 of the Dowry Prohibition Act.

2. Heard. Perused the records.

3. The learned counsel for the petitioners contended that the allegations of the complaint would disclose that for one year, petitioner No.1 and the complainant/respondent No.2 were lived happily and subsequently, the allegations of ill-treatment were made and admittedly, the complainant and the petitioners are residing separately from in-laws and hence, the learned NC: 2024:KHC-K:80 counsel for the petitioners sought for quashing the proceedings.

4. Per contra, learned High Court Government Pleader appearing for respondent No.1/State would oppose the petition contending that there is prima facie material evidence and even the petition under the Domestic Violence Act, 2005 is filed, wherein maintenance and compensation was also sought. Hence, he would seek for dismissal of the petition.

5. Having heard the arguments and perusing the records, it is evident that there is no serious dispute regarding the marriage between the complainant/respondent No.1 and the accused. The allegations disclose that the marriage was solemnized on 20.05.2017 and during the marriage, gold and cash were given as a dowry as per the demand. It is further alleged in the complaint that for one year, she was looked after well and thereafter, the complainant was subjected to ill-

NC: 2024:KHC-K:80 treatment on the ground that the sufficient dowry was not paid during the marriage as agreed and she does not know the household work. It is further asserted that on 24.07.2023 at 11 O' clock in the morning, she was driven out of the house which compelled her to lodge a complaint. The records further disclose that she has also filed a petition on 19.09.2023 under Section 12 of the Domestic Violence Act, 2005 claiming maintenance and compensation. The records also disclose that the statements of the witnesses were recorded by the investigating officer and there is sufficient material evidence to proceed against the petitioners at this juncture. This is not a rarest of rare case, wherein the discretion can be exercised for quashing the proceedings.

Under these circumstances, petition is devoid of any merits and no grounds are made out for admitting the matter itself. As such, the petition stands dismissed.

NC: 2024:KHC-K:80 In view of disposal of the petition, I.A.No.1/2023 filed for stay does not survive for consideration and accordingly stands disposed of.

Sd/-

JUDGE RSP

Smt. Neelamma W/O Late M Basavana Gouda vs Smt. M Nirmala Alias Rajeshwari W/O Late ... on 21 March, 2024

- 1 -

NC: 2024:KHC-D:5601
CRL.RP No. 100075 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100075 OF 2022 (397)

BETWEEN:

1. SMT. NEELAMMA W/O LATE M.BASAVANA GOUDA,
AGE: 61 YEARS, OCC: HOUSEWIFE,
R/O Y. KAGALLU VILLAGE
TQ AND DIST: BALLARI-583119.
2. MR. M.SHANTHANA GOUDA S/O LATE M.BASAVANA
GOUDA, AGE: 44 YEARS, OCC: COOLIE WORK,
R/O. Y. KAGALLU VILLAGE
TQ AND DIST: BALLARI-583119.
3. MR. M. BASAVARAJ S/O LATE M. BASAVANA GOUDA,
AGE: 38 YEARS, OCC: COOLIE WORK,
R/O Y. KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.
4. SMT. M. CHANNAMMA W/O M. SHANTHANA GOUDA,
AGE: 39 YEARS, OCC: HOUSEWIFE,
R/O Y.KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.
5. SMT. M.YERRAMMA W/O M.BASAVARAJ,
AGE: 33 YEARS, OCC: HOUSEWIFE,
R/O GENIKEHAL VILLAGE, TQ: KURUGODU,
DIST: BALLARI-583119.
6. SMT. S.SHOBHA @ HAMPAMMA W/O DODDANAGOUDA
AGE: 41 YEARS, OCC: HOUSEWIFE,

Digitally signed by
SAROJA
HANGARAKI
Location: HIGH
COURT OF
KARNATAKA
DHARWAD BENCH
DHARWAD

R/O Y KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.

...PETITIONERS

(BY SRI. SADIQ N. GOODWALA, ADVOCATE)

-2-

NC: 2024:KHC-D:5601
CRL.RP No. 100075 of 2022

AND:

1. SMT. M.NIRMALA @ RAJESHWARI
W/O LATE M. NAGARAJA
AGE: 36 YEARS, OCC: HOUSEWIFE,
2. M.SUPRIYA D/O LATE M.NAGARAJA,
AGE: 13 YEARS, OCC: STUDENT,
3. M.MEGHANA D/O LATE M.NAGARAJA
AGE: 08 YEARS

ALL ARE R/O. GUNDIGANURU VILLAGE,
TQ: SIRAGUPPA, DIST:BALLARI-583121.

RESPONDENTS NO.2 AND 3 ABOVE ARE THE MINORS
AND THEY ARE REPRESENTED THROUGH THEIR
NEXT FRIEND AND NATURAL GUARDIAN MOTHER,
SMT. M.NIRMALA
RESPONDENT NO. 1 (AS RESPONDENTS NO.2 AND 3
WERE REPRESENTED THROUGH RESPONDENTS NO.1
BEFORE THE LOWER COURT)

...RESPONDENTS

(BY SRI. J. BASAVARAJ FOR R1, R2 & R3 ARE MINORS R/BY R1
SRI. B. JNANAYYASWAMI, ADVOCATE FOR R1)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W
401 OF CR.P.C., SEEKING TO SET ASIDE THE ORDER DATED
06.01.2022 PASSED BY IV ADDITIONAL DISTRICT AND SESSIONS
JUDGE, (COMMERCIAL COURT), BALLARI IN CRL. APPEAL
NO.54/2019 WHICH HAS CONFIRMED THE ORDER DATED
24.09.2019 PASSED BY CIVIL JUDGE AND JMFC, SIRGUPPA IN CRL.
MISC NO.1053/2018 BY ALLOWING THE PETITION.

THIS PETITION, COMING ON FOR ARGUMENTS, THIS DAY, THE
COURT MADE THE FOLLOWING:

-3-

NC: 2024:KHC-D:5601

ORDER

The matter was though listed for admission, on consent of both the counsels, the matter was taken for final disposal.

2. Revision petitioners/ respondents feeling aggrieved by judgment of the first appellate Court on the file of IV Addl. Dist. & Sessions Judge (Commercial Court) at Ballari in Crl. A. No. 54/2019 dated 06.01.2022 in confirming the order passed by the trial Court on the file of Civil Judge & JMFC, Siruguppa in Crl. Misc. No. 1053/2018 dated 24.09.2019 in granting interim maintenance, preferred this revision petition.

3. Parties to the revision petition are referred with their ranks as assigned in the trial Court, for the sake of convenience.

4. Heard the arguments of both sides.

5. After hearing arguments of both sides and on perusal of the impugned judgment under revision, the following points arise for consideration.

i) Whether the impugned judgment under revision petition passed by the first appellate Court in confirming the order of trial Court in granting interim maintenance to the petitioners is perverse, capacious and legally not sustainable?

NC: 2024:KHC-D:5601

ii) Whether interference of this Court is required?

6. On careful perusal of the records, it would go to show that the petitioners have filed application U/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'P.W.D. Act' for brevity) for seeking monetary relief. The respondent No.1 is the mother-in-law, respondents No.2 and 3 are the brothers-in-law, respondents No. 4 and 5 are the co-sisters and respondent No. 6 is the sister-in-law of petitioner No.1. The husband of first petitioner M. Nagaraj died on 30.12.2015 due to cardiac disease in Gundiganuru village. After the death of husband of first petitioner, respondents started harassing the first petitioner and driven out the petitioners from matrimonial home. The first petitioner with her children is residing in her parental house in Gundiganuru village. The first petitioner has no independent source of income. Therefore, sought for various reliefs under the provisions of P.W.D. Act.

7. The respondents have appeared and filed objections contending that the first petitioner is not interested to lead her life in the joint family and she is demanding the share of her husband in the

family properties. The respondents are ready to NC: 2024:KHC-D:5601 give her and children's share, but first petitioner is not ready to take loan equally. The respondents are ready to take back first petitioner and her children to matrimonial home and also to look after the welfare of petitioner Nos.2 and 3. Therefore, prayed for dismissal of the petition.

8. The trial Court after hearing both parties granted interim maintenance by order dated 24.09.2019 and had directed the respondents to pay Rs.4,000/- per month to the first petitioner and Rs.3,000/- each to petitioner Nos.2 and 3 until further orders.

9. The said order was challenged by the respondents before first appellate Court in Crl. A. No. 54/2019. The first appellate Court after hearing both sides dismissed the appeal and confirmed the order passed by the trial Court.

10. Learned counsel for revision petitioners/respondents has argued that the husband of first petitioner M. Nagaraj died on 30.12.2015 and the respondents are not under legal obligation to provide maintenance to the first petitioner and her children. It is only the husband of first petitioner was under legal obligation to pay the maintenance amount. If at all the petitioners have got any right of share in the properties of joint NC: 2024:KHC-D:5601 family of late Nagaraj, husband of the first petitioner, then the same has to be worked out in accordance with law before the appropriate forum.

11. Per contra, learned counsel for respondents/ petitioners has argued that the respondents have got sufficient properties and they are under legal obligation to maintain the petitioners. They have deprived the right of petitioners of their share in the properties left by the deceased husband of first petitioner. The Courts below have rightly appreciated the material placed on record and justified in granting the maintenance to the petitioners.

12. The monetary reliefs in terms of Sec. 20 of the P.W.D. Act can be directed against the respondent while disposing of an application under 12(1) of the P.W.D. Act. In terms of Section 23 of the P.W.D. Act, the Court has also got power to grant interim maintenance amount. In this context of the matter, it is useful to take note of relevant definition U/s 2 of P.W.D. Act.

"2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the NC: 2024:KHC-D:5601 respondent and who alleges to have been subjected to any act of domestic violence by the respondent; "2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

"2(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act."

On plain reading of the definition of 'aggrieved person', 'domestic relationship' and 'respondent' as defined in Sec.2(a),

(f) and (q) of P.W.D. Act respectively, it would go to show that while considering grant of relief in terms of Sec. 18 to 23 of the P.W.D. Act, the 'aggrieved person' being in domestic relationship with respondent, is to be established.

13. In the present case, the husband of the first petitioner M.Nagaraj died on 30.12.2015. It is specifically pleaded in the complaint that till the death of husband of first petitioner, she was residing in the matrimonial home along with her children. After six months of the death of husband of first petitioner, she NC: 2024:KHC-D:5601 was being ill treated and harassed by the respondents. The petitioners were driven out of the matrimonial home. On 30.12.2017 there was panchayath held in presence of Chidanandappa, Thimmana Gowda, Veerasha, Uluru Thimmappa and others at matrimonial house of first petitioner. The elders advised the respondents to take back the first petitioner and her children and not to ill treat them. The first petitioner along with her children stayed in the matrimonial home for about six months. However, they were again driven out from the matrimonial home and she temporarily took shelter in a rented house in Gundiganuru village. The joint family possesses the agricultural lands and a house property in which the first petitioner along with her children was residing with her husband. The respondents have not denied that their joint family possesses agricultural land and a house property. On the contrary, they claim that they are ready to allot the share of petitioners, provided she equally shares the loan.

14. The said material evidence placed on record would go to show that the first petitioner was having domestic relationship and the first petitioner is aggrieved person. The respondents admittedly possesses the joint family properties and a house NC: 2024:KHC-D:5601 property in which the petitioners have right of share representing the share of deceased M. Nagaraj, husband of the first petitioner. The first petitioner has pleaded that she has no any independent source of income and the respondents being the members of the joint family are in possession of the joint family properties. Therefore, the respondents are duty bound to provide reasonable maintenance amount for sustenance of the petitioners.

15. Learned counsel for the respondents in support of his contention that the respondents are under no legal obligation to provide maintenance to the petitioner, relied on the Co-ordinate Bench judgment of this Court in Abdul Khader & Another Vs. Tasleem Jameela Agadi & Ors. (R.P.F.C. No. 100026/2022 dated 21.02.2024) wherein it has been observed and held as under:

"In the absence of any power vested in the Court under Section 125 of Cr.P.C., to entertain a petition filed by the daughter in law against her parents in law, this Court is of the considered opinion that the entire order is non est for want of jurisdiction."

16. The Hon'ble Division Bench of Bombay High Court had an occasion to consider as to whether father-in-law was liable to pay the maintenance amount to his daughter-in-law in Laxmi & Ors. Vs. Santosh reported in 2021 SCC Online Bombay 359, wherein it has been observed and held at paragraph Nos.14, 15 and 16 as under:

"14. It is a settled legal position that father in law has moral responsibility to maintain the widowed daughter-in- law. In T.A. Laxminarasamba (supra) the Full Bench of Andhra Pradesh High Court held thus;

'The moral obligation of a father-in-law possessed of separate or self acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property'.

15. The Division Bench in Madhukar s/o Kishan Lokhande vs. Shalu Wd/o Narendra Lokhande reported in (2013) 6 MAH.L.J. 391 which is authored by one of us (Hon'ble Sri A.S. Chandurkar, J), it is held that to maintain the widowed daughter-in-law is a legal responsibility of father-in-law. Section 19 and 22 of the Act create first obligation to maintain a widowed daughter-in-law on the father-in-law. The obligation only

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NC: 2024:KHC-D:5601 shifts on the father of the widow, if the father-in-law proves his inability to maintain her.

16. In the light of above ratio and considering the evidence on record we are of the considered view that the appellants have proved that respondent held the estate, coparcenary property of the deceased Rarag and therefore the respondent was under obligation to provide maintenance to the appellants."

The Co-ordinate Bench judgment of this Court in Abdul Khader & Another referred supra, pertains to the proceedings U/s 125 of Cr.P.C. In view of the definition under the P.W.D. Act extracted above, it is evident that considerations for grant of monetary reliefs under P.W.D. Act is different than the one covered under the proceedings U/s 125 of Cr.P.C.

17. If the first petitioner could able to demonstrate that she is in domestic relationship with the respondents and she is aggrieved person can maintain an application U/s 12 of the P.W.D. Act. The Division Bench of Hon'ble Bombay High Court in Laxmi & Ors. referred supra, held that father-in-law has moral responsibility to maintain the widowed daughter-in-law. It is true that in the said case before the Hon'ble Bombay High

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NC: 2024:KHC-D:5601 Court, case was covered under the provisions of Sec. 19 and 22 of Hindu Adoptions & Maintenance Act, 1956. However, the principle enunciated in the said judgment regarding the responsibility of father-in-law to maintain the daughter-in-law holds good.

18. In another latest judgment of Hon'ble Apex Court in Prabha Tyagi Vs. Kamalesh devi in Criminal Appeal No. 511/2022 dated 12.05.2022, after analyzing the provisions of P.W.D. Act has held as under:

"There should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application U/s 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application U/s 12 of the D.V. Act."

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NC: 2024:KHC-D:5601 In view of the principles enunciated in the aforesaid judgment of the Hon'ble Apex Court and the facts involved in the present case referred above, it would go to show that the petitioners have established their relationship with deceased M. Nagaraj, the husband of first petitioner and they were residing in the joint family house till they were driven out from the matrimonial home of first petitioner. The joint family admittedly possesses the joint family property which are now in possession of respondents are duty bound to maintain the petitioners by providing reasonable amount of maintenance.

19. The Courts below have rightly appreciated the material evidence on record in holding that the petitioners are entitled for maintenance and directing the respondents to pay the maintenance amount. Looking to the cost of living in these days and the minor children of first petitioner and deceased M.Nagaraj being looked after by the first petitioner, the quantum of maintenance awarded by the trial Court which is affirmed by the first appellate court also does not warrant any interference by this Court. Consequently, proceed to pass the following order.

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NC: 2024:KHC-D:5601 ORDER Revision petition filed by the revision petitioners/ respondents is hereby dismissed as devoid of merits.

Sd/-

JUDGE BVV CT:GSM

Smt.Priyanka Singh vs Sri.Pankaj Singh Sengar on 5 April, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

1

Reserved on : 18.01.2024

Pronounced on : 05.04.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48615 OF 2013 (GM - FC)

C/W

WRIT PETITION No.41607 OF 2017 (GM - FC)

WRIT PETITION No.41608 OF 2017 (GM - FC)

IN WRIT PETITION No.48615 OF 2013

BETWEEN:

SMT.PRIYANKA SINGH
W/O PANKAJ SINGH SENGAR
AGED ABOUT 32 YEARS
R/AT B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... PETITIONER

(BY SMT.RADHIKA M., ADVOCATE)

AND:

SRI.PANKAJ SINGH SENGAR
S/O R.S.SENGAR

2

AGED ABOUT 34 YEARS

R/AT. B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SRI B.V.KRISHNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.9.2013 PASSED ON THE MEMO FILED BY THE PETITIONER ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGLAORE IN M.C. NO.3014/2012 VIDE ANN-G; MODIFY THE ORDER DATED 30.11.2012 AND ENHANCE THE MAINTENANCE AMOUNT FROM RS.15,000/- TO RS.70,000/- PER MONTH BY ALLOWING I.A. NO.3 IN M.C. NO.3014/2012 ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGALORE VIDE ANN-D.

IN WRIT PETITION No.41607 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI R.S.SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FRIEND

3

SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 282 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN M.C.3014/2012 ON THE FILE OF THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DATED 10.08.2017 ON I.A.8 IN M.C.3014/2012 PASSED BY THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A BY ISSUING A WRIT IN THE NATURE OF CERTIORARI AND ALLOW THE SAID APPLICATION I.A.8.

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IN WRIT PETITION No.41608 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI. R.S. SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FIREND
SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO. A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 208 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLATNO.1405,

L & T SOUTH CITY APARTMENTS,
AREKERE MICO LAYOUT,
OFF BANNERGHATTA ROAD,
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

5

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN EX.C.NO.152/2015 ON THE FILE OF THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DTD.10.8.2017 IN EX.C.NO.152/2015 PASSED BY THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These cases arise out of M.C.No.3014 of 2012 pending before the Principal Family Court, Bangalore and parties to the lis in all these cases are common; they are husband and wife. Therefore, they are taken up together and considered by this common order. For the sake of convenience, the parties are referred to as per their ranking in the matrimonial case i.e., husband is referred to as the petitioner and wife as the respondent. Writ Petition No.48615 of 2013 is preferred by the wife.

2. The facts, in brief, germane are as follows:-

The petitioner and the respondent got married on 16-05-2011 and have a daughter born from the wedlock. The marriage between the two appears to have floundered and on the floundering of the said relationship, the husband prefers M.C.No.3014 of 2012 seeking annulment of marriage that had taken place between the two. The allegation of the husband was that the wife had left the matrimonial house on her own volition. The issue in the lis does not concern merit of the claim of the husband seeking annulment of marriage or defence of the wife. In the said petition, the wife files an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties on the application, grants the wife interim maintenance of `15,000/- per month in terms of its order dated 30-11-2012. The wife then files a memo of calculation before the concerned Court on 08-07-2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejects the memo. The rejection of the

memo forms the subject matter of challenge in Writ Petition No.48615 of 2013 coupled with a prayer to enhance interim maintenance. During the pendency of the said petition, the husband/petitioner suffers a stroke resulting in 75% disability, due to which, he had resigned from his work and on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiates execution petition seeking execution of the order of maintenance. The concerned Court, in terms of its order dated 05-02-2016, directs the father of the husband to pay arrears of maintenance. When that is not adhered to, a fine levy warrant and arrest warrant are issued against the husband on 12-07-2017 and 10-08-2017. This forms the subject in Writ Petition No.41608 of 2017. The other writ petition in W.P.No.41607 of 2017 is again preferred by the husband calling in question the order passed on 10-08-2017 on I.A.No.8 in M.C.No.3014 of 2012 whereby the application filed by the husband to recall the order of maintenance comes to be rejected. Therefore, Writ Petition No.41607 of 2017 is preferred by the husband challenging the rejection of I.A.No.8 seeking recall of the order granting maintenance and Writ Petition No.41608 of 2017 challenges the order of issuing fine levy warrant and arrest against the husband.

3. Heard Sri B.V.Krishna, learned counsel appearing for the husband/petitioner and Smt M. Radhika, learned counsel appearing for the wife/respondent.
4. The learned counsel appearing for the wife/respondent would vehemently contend that the husband/petitioner has abandoned the wife at the time when she was carrying the child. She has maintained herself all along and the husband has refused to maintain either the wife or the child, and therefore, seeks appropriate order enhancing grant of maintenance.
5. Per-contra, the learned counsel appearing for the husband/petitioner would contend that maintenance today is a dream to be paid by the husband as he has suffered disability of 75% which does not get him any job. He is no longer an able bodied person to search for job and maintain the wife and the child.
6. In reply the counsel for the wife/respondent would submit that the father of the petitioner has several properties. Therefore, the father could maintain the wife and the child of the petitioner and they cannot be left in the lurch. Both the petitioner and the respondent have placed reliance upon certain judgments which would bear consideration in the course of the order.
7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.
8. The afore-narrated facts are not in dispute. The relationship between the two and the birth of girl child from the wedlock are all a matter of record. The genesis of the issue is on the husband filing a petition seeking annulment of marriage in M.C.No.3014 of 2012 in which the wife/respondent files an application seeking interim maintenance. The Court considering the application and submissions of both the parties, grants interim maintenance by the following order:

".....

4. Point No.1 & 2:- Main petition is of the husband seeking divorce from the respondent on the ground of cruelty (U/sec. 13 (1) (la) of the Hindu Marriage Act). On service of notice of this petition, the respondent appeared before this Court personally on 10/10/2012 and later filed application U/sec. 13 of the Family Courts Act on the adjourned date and she is represented by advocate. On the same date, this IA has been filed by the respondent. The matter came to be posted for objections to IA No.3 as well as for the parties to go to the Bangalore Mediation Centre for the purpose of mediation. However, it is submitted by the advocate for the respondent that there is urgency for the respondent for disposal of IA No.3 as she is in advanced stage of pregnancy. Advocate for the applicant/respondent has addressed oral arguments. Advocate for the opponent/petitioner apart from addressing oral arguments has filed written arguments also on this IA No.3. Opponent/petitioner has produced some documents along with the memo. The applicant/respondent admits her relationship with the opponent/petitioner as his wife. (For the sake of convenience, the petitioner is referred to as the husband and the respondent is referred to as the wife). The husband admits that the wife is in advanced stage of pregnancy. The documents and other records produced by the husband go to show that the wife has filed police complaints against the husband etc... Some of the records have been produced by the husband to show that he has concern about the health of the wife and he has spent substantial amount for her medical expenses etc., The husband has stated that his monthly salary as per the Salary Slip is Rs.76, 371/- As per the husband, he has the other liabilities to look after his aged parents and has to make payment of rent amount in respect of independent residences for the wife as well as his parents. Now it will suffice, for the sake of arriving at conclusion as to what amount the wife is entitled to interim maintenance, to take into consideration the salary income of the husband. Looking to the status of the husband and the status of the wife that was enjoyed by her during her stay with the husband, I am of the opinion that Rs.15,000/- per month will be the reasonable amount for maintenance of the wife pending final disposal of the main petition Rs. 10,000/- appears to be the reasonable amount towards litigation expenses. For the foregoing reasons, I proceed to pass the following:-

ORDER IA No. 3 of the respondent is partly allowed.

The petitioner/husband is hereby directed to pay to the respondent/wife Rs.15,000/-per month towards interim maintenance pending final disposal of the main petition. The petitioner/husband is further directed to pay the Rs.10,000/- towards litigation expenses."

(Emphasis added) The Court grants the wife `15,000/- per month as interim maintenance and `10,000/- towards one time litigation expenses. This is not paid by the husband. The wife/respondent files a memo of calculation before the concerned Court seeking huge arrears from the hands of the respondent. This comes to be rejected by the concerned Court in terms of the order dated 20-09-2013. This has driven the wife/respondent to this Court in Writ Petition No.48615 of 2013. The issue now would be, whether the husband should be directed to pay maintenance to the wife and the child, to which certain facts need to be noticed.

9. The husband was employed in a company by name Textron India Private Limited. During his employment, the petitioner suffers a stroke and the disability is identified as Chronic Neurological Condition and is assessed at 75%. The assessment is by NIMHANS, Bangalore and the husband is also issued a disability certificate based upon the assessment by NIMHANS. The disability certificate reads as follows:

"Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India Disability Certificate Issuing Medical Authority, Bengaluru Urban, Karnataka PHOTO Certificate No.: KA1891219770276312 Date: 20/01/2023 This is to certify that I/we have carefully examined Shri Pankaj Singh Sengar, Son of Shri Rajendra Singh Sengar, Date of Birth 24/09/1977, Age 45, Male, Registration No. 2918/00000/2207/1531923, resident of House No. Flat No. L1-116, Sowparnika Phase 1. Sarjapura - Attibele Road, Bidarguppe - 562107, Sub District Anekal, District Bengaluru Urban. State / UT Karnataka, whose photograph is affixed above, and I am/we are satisfied that:

(A) He is a case of Chronic Neurological Conditions (B) The diagnosis in his case is Right Hemiparesis with cognitive dysfunction and Aphasia (C) He has 75%(in figure) Seventy Five percent(in words) Permanent Disability in relation to his RIGHT UPPER LIMB, RIGHT LOWER LIMB as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

The applicant has submitted the following document(s) as proof of residence:

Nature of Document(s): Registered Sale/Lease Agreement Signature/Thumb Impression of the Person with Disability Sd/-

Signatory of notified Medical Authority Member(s)"

The condition of the husband is a Chronic Neurological disability with cognitive dysfunction and is said that he is unable to walk even.

After suffering the said disability the petitioner submits his resignation to his employment. The letter of resignation reads as follows:

"Name: Pankaj Sengar Employee ID: 1000840188 Sub: Resignation acceptance Letter This refers to the email dated 22 May 2015, sent by Priyanka Sengar (your sister) on your behalf, resigning from the services of the company and the subsequent discussions we had over phone.

We hereby inform you that your resignation, under reference, has been accepted by the management with regret and you will be relieved from the services of the

company with effect from 31 May 2015.

We draw your attention to your continuing obligation of confidentiality with respect to any proprietary and confidential information of Textron that you may have had access to during the course of your employment. As a part of the separation process, we are attaching the exit documents. Please sign on these documents and send it back to the undersigned as soon as possible to expedite the full & final and relieving process.

We thank you for your valuable contributions and wish you a speedy recovery. Do contact us in future to explore the job opportunities. Get well soon.

Wish you all the very best.

Thanking You, Yours sincerely, For Textron India Private Limited"

(Emphasis added) The petitioner is relieved from service of the Company with effect from 31-05-2015. Prior to that on account of continuous absence of the husband, he was placed on loss of pay from 16-12-2013 till 09-07-2014. This communication reads as follows:

"To Whom It May Concern Dear Sir/Madam, This is to certify that Pankaj Singh Sengar is an employee at Textron India Private Limited.

Date of Joining	:	14th March 2011
Designation	:	Technical Specialist
Employee ID	:	1000840188

Employee is on loss of pay from 16th December 2013 till date and the letter has been issued for insurance purpose.

Yours sincerely.

For Textron India Private Limited Sd/-

Reshma B S Sr.Executive - HR Ops"

(Emphasis added) Therefore, on and from the husband suffering disability he has remained outside employment. The State Government has issued a disability certificate as is required in law. Government of India has also issued such certificate which is quoted supra. Therefore, it is an admitted fact that the husband suffers from a disability which is to the tune of 75% and takes away all the badge of the husband to be an "able bodied man" as disability is admitted.

10. The husband files an application seeking recall of the order granting interim maintenance. This is rejected on the plea of the wife/respondent that the husband/petitioner has recovered from illness

and now he is an able bodied person. This is the challenge in Writ Petition No.41607 of 2017. The wife does not stop at that. She initiated execution petition against the husband contending that the father of the husband had to pay her the maintenance and to the child. The husband is projected to be represented by the father and accordingly execution is preferred. In the execution petition, the Court issues fine levy warrant against the husband for non-payment of maintenance. Therefore, all these petitions are before this Court.

11. The only issue that false for consideration is, "Whether the husband is to be directed to pay maintenance and the order passed by the concerned Court directing issuance of arrest warrant or fine levy warrant should be sustained?"

12. What is the status of the wife/respondent is also necessary to be noticed. The admitted qualification of the wife is that she has Masters in Computer Application and Pre-MCA completion. The wife is working as a teacher in several schools. The resume of the wife insofar as it is relevant reads as follows:

"....

Project Work

Completed Six months project on "Personal Information Management system"

Role: Initial role was for initial understanding of the project along with coding of the project for complete behavior and integrating it with "BAAN ERP".

Technology Used: Project coding specification:

Front End:	Oracle Developer.
Backend server:	DB2
Intermediate Development:	JSP

Education Qualification

Masters of Computer Application with 67.18%. Certificate in computing i.e.: CIC with 60%. Technical Proficiency:

Languages	:	C++/JAVA/Oracle
Web Technologies	:	JSP/HTML
Operating Systems	:	Windows 98/2000/XP
Databases	:	SQL Server
Middleware	:	Apache/Tomcat

Employment History

- Official training of six month from INDIAN TELEPHONE INDUSTRY (I.T.I MANKAPUR)

Pre MCA Completion:

- Teaching Experience as a Computer Instructor

from KENDRIYAVIDYALAYA I.T.I Mankapur.

- Teaching as a Computer Teacher in Fatima Convent School Mankapur.
- Teaching as a Computer Teacher in Fatima Convent School GONDA.

....."

The situation now is, the wife is qualified and is even working and earning certain amount of money. Whether that would be enough or not is a different circumstance. The issue is whether the husband can be directed to pay maintenance.

13. On a few occasions, this Court directed the parties to appear before the mediation centre and settle the issue. Every time it was only the father of the husband appears and the husband did not. Therefore, the husband also was directed to be present. Photographs of the husband are produced before Court. The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an able bodied man to search for employment and pay maintenance to maintain the wife and the child.

14. The learned counsel for the wife/respondent projects several grievances against the husband. It is the submission of the wife/respondent that the husband is a fraud and he has fraudulently projected himself to be a disabled man inter alia. These would all be in the realm of evidence. This Court, for the present, would go by the disability certificate issued by both Government of India and State Government which is based upon the assessment of disability by NIMHANS. If the husband is incapable of earning due to disability, it is highly ununderstandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.

15. It becomes germane to notice the judgment of the Apex Court in the case of RAJNESH v. NEHA¹ which dealt with the grant of maintenance and its forms and hues. The Apex Court at paragraph 93 has held as follows:

"(e) Serious Disability and ill health:

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."

(Emphasis supplied) The Apex Court observes that serious disability or ill-health of a spouse who would require constant care and recurring expenditure (2021) 2 SCC 324 would also be a relevant consideration while quantifying maintenance. The High Court of Calcutta in a similar circumstance in a judgment rendered in INDRANIL ADHIKARI v. ARUNIMA ADHIKARY² has held as follows:

"....

12. That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.

13. The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.

14. The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.

15. The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.

16. In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.

17. The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears that the petitioner/husband has been diagnosed with 60% 2023 SCC OnLine Cal 3318 permanent disability (left foot) and he cannot travel with assistance of escort.

18. But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.

19. An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.

20. The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.

21. The disability certificate has been issued on 27.10.2018.
 22. Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.
 23. But any prayer for modification etc. in such proceedings due to subsequent developments and change in circumstances is to be made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court in such proceedings (Rajnesh v. Neha, (2021) 2 SCC 324).
 24. The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside."
- (Emphasis supplied) The Calcutta High Court was considering the disability of a husband at 60%. What was challenged by the husband was a condition to pay 25% of the arrears in the execution case. The said condition was set aside on the ground that the husband is no longer an able bodied man.
16. It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled. As the disability happened in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.
 17. The learned counsel for the wife/respondent has placed on record a memo of calculation. The memo depicts that as on today, the maintenance that is to be paid by the husband is a whopping sum of Rs.19,04,000/- . The duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled. If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability. By no means he can be depicted to be an able bodied man to direct that he should search for such avocation that would enable him to maintain the wife and the child. The wife is earning, even if not earning is completely qualified and is capable of earning. Therefore, the orders that are now sought to be passed by the wife cannot even be considered to be passed.
 18. It is projected that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance. This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and for the last 10 years there is no maintenance

paid; obviously the wife who is qualified is working and earning. Insofar as grant of maintenance to the child is concerned, I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild's necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected. The fine levy arrest warrant issued by the executing Court/Trial Court requires to be set aside. Likewise the application filed for recalling the order dated 30-11-2012 is to be allowed in part, up to the date when the husband/petitioner suffered disability i.e., December, 2013. Therefore, till the said date the wife/respondent is entitled to such maintenance, which the father of the husband/petitioner can pay, not to the wife but to the child.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.48615 of 2013 stands rejected however, observing that arrears of maintenance till the date of disability, shall be fulfilled by the father of the husband/petitioner.
- (ii) Writ Petition No.41607 of 2017 is allowed in part, again restricting the order of maintenance to the date on which the husband/petitioner suffers disability.
- (iii) Writ Petition No.41608 of 2017 is allowed. The order passed in Execution Petition No.152 of 2015 in terms of its order dated 10-08-2017 stands quashed.

Consequently, pending applications, if any, also stand disposed.

Sd/-

JUDGE bkp CT:MJ

Smt Roshani Mangalore vs Sri N Vipin Suvarna on 26 June, 2024

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NC: 2024:KHC:23566-DB
MFA No.3385/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF JUNE, 2024
PRESENT
THE HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.3385/2017 (FC)
BETWEEN:

SMT. ROSHANI MANGALORE
W/O N. VIIPIN SUVARNA
AGED ABOUT 56 YEARS
NO.12, MILLWOOD COURT
NEW ROAD, CHATHAM
ME44BD

Digitally signed by K S

RENUKAMBA

Location: NOW TEMPORARILY RESIDING AT
High Court of PADMAPPA COMPOUND
Karnataka PANDESHWAR CROSS ROAD
MANGALORE - 575001.

...APPELLANT
(BY SRI. HEMANTH KUMAR D, ADV.,)
AND:

SRI. N. VIPIN SUVARNA
S/O LATE N.R. SUVARNA
AGED ABOUT 62 YEARS
R/AT NO.201, SCION
WINDFLOWER
NO 2 AC - 716-718 IIND A CROSS
7TH MAIN ROAD, HRBR LAYOUT
1ST BLOCK ,KALYAN NAGAR
BANGALORE - 560043.

...RESPONDENT
(BY SRI. P.P. HEGDE, SR. COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADV.,)

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NC: 2024:KHC:23566-DB
MFA No.3385/2017

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 23.07.2007 PASSED IN M.C.NO.745/2003 ON THE FILE OF THE 1ST ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU CITY, ALLOWING THE PETITION FILED UNDER SECTION 13(1) OF THE HINDU MARRIAGE ACT, FOR DISSOLUTION OF MARRIAGE.

THIS APPEAL, COMING ON FOR DICTATION, THIS DAY,
K.S.MUDAGAL J., DELIVERED THE FOLLOWING:

JUDGMENT

Challenging the judgment and decree of divorce granted against her, the respondent in M.C.No.745/2003 on the file of I Additional Principal Judge, Family Court, Bangalore City, has preferred this appeal.

2. The appellant was the respondent and the respondent was the petitioner in M.C.No.745/2003 before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.
3. The marriage of the petitioner and the respondent was solemnized on 04.05.1983 in Mangaluru. The parties are Hindus and are governed by the Hindu Marriage Act, 1955 (for short, 'the Act'). In their conjugal life, the couple are blessed with daughter by name Varsha on 27.05.1984. The petitioner NC: 2024:KHC:23566-DB was working as a Bank Manager. The respondent pursued her education in M.Phil., in Economics and completed the same in the year 1989. On Commonwealth scholarship, she went to UK for her studies in Ph.D in Economics. Later she got employment and the petitioner and the child joined the respondent in Yorkshire and lived for about six months. Then he returned to India, the child continued in the custody of the respondent. Later, the child came back to India to pursue education. Upto 1995, the child continued with the mother of the petitioner and was pursuing the education. Thereafter, the respondent took the child with her.
4. Petitioner filed M.C.No.745/2003 claiming that since November 1997, respondent stopped responding to his letters and communication and withdrew from his society without reasonable cause. His request through his advocate to the High Commission of India, India House, London, to trace the respondent and the child went in vain. He sought decree of divorce on the ground of desertion. Notice on respondent was served by paper publication and she was set ex parte. In support of the case of the petitioner, petitioner got himself examined as PW-1 and got marked Exs.P-1 to P-5.

NC: 2024:KHC:23566-DB

5. The trial Court on hearing the petitioner, allowed the petition and granted decree of divorce. The trial Court held that the petitioner's testimony that the respondent deserted him since 1997 and his attempts to trace her through the High Commission of India, London, were uncontroverted, thereby the ground of desertion is proved.

6. The respondent has challenged the said decree in the above appeal claiming that the petitioner without duly serving the petition notice on her, managed to take notice by paper publication and managed to get the ex parte decree, etc.

7. Sri.Hemanth Kumar D., learned counsel for the respondent-wife, reiterating the grounds of appeal, submits that the petitioner despite being aware that respondent is not in India, to secure ex parte decree, took notice by publication in newspaper which was in circulation only in Karnataka. He further submits that though the petitioner furnished both the addresses, initially he took notice to the address of the respondent in UK schemingly got published the notice in local newspaper. The respondent came to know about the decree only when the same was produced in Crl.Misc.42/2016 filed by NC: 2024:KHC:23566-DB the respondent and her daughter under Section 125 of Cr.P.C. He submits that considering the ground of fraud played on the wife, this Court has already condoned delay of 3530 days in filing the appeal. Therefore, this appeal also requires to be allowed and she be given opportunity.

8. Sri.P.P.Hegde, learned Senior counsel appearing for Sri.Venkatesh Somareddi, advocate on record for the petitioner- husband, submits that the respondent-wife herself in Crl.Misc.Nos.42/2016 and 116/2016, the proceedings under Section 125 Cr.P.C. and Protection of Women from Domestic Violence Act, 2005, respectively and the complaint filed by her in PCR No.26/2016, has given Mangaluru address claiming to be resident of Mangaluru. He claims that respondent-wife had no inclination to lead conjugal life, she did not even challenge the impugned decree within time. After three years of decree, on 18.12.2011 the petitioner has married another woman by name V.Saraswati. The appeal is filed in the year 2017. By such second marriage, this appeal has become infructuous and is liable to be dismissed on that ground alone. On the same ground, the petitioner-husband has filed I.A.No.2/2022 in this appeal for dismissal of the appeal.

NC: 2024:KHC:23566-DB

9. Sri.P.P.Hegde, learned Senior counsel submits that Crl.Misc.Nos.42/2016 and 116/2016 both were dismissed holding that the respondent-wife's allegations that the husband has subjected her to mental, physical and economical violence are not proved and those findings have attained finality. In support of his submission, he relies on the following judgments:

- i. Krishnaveni Rai vs. Pankaj Rai and another¹
- ii. Lemhmber Singh vs. Kuldeep Kaur²
- iii. Seema Devi vs. Ranjit Kumar Bhagat³

10. On considering the submissions and examining the material on record, the point that arises for determination is "Whether the impugned judgment and decree of divorce granted by the trial Court is sustainable in law"?

ANALYSIS

11. The parties are not at dispute that they were married on 04.05.1983 and they begot a daughter on 27.05.1984. It is also not disputed that with the consent of the petitioner himself, wife moved to UK for higher studies and she (2020) 11 SCC 253 2014 SCC OnLine P&H 25061 2023 SCC OnLine Del 2257 NC: 2024:KHC:23566-DB got employed there. According to him, from November 1997 the respondent-wife deserted him and she stopped replying to his letters and informing about her whereabouts. It is also not disputed that their daughter during her minority was staying with respondent and thereafter she was staying with the mother of the petitioner. Despite that, the petitioner in his petition gave her Mangaluru address and UK address also.

12. Initially he took notice to her UK address shown in the cause title of the petition and that was returned with the endorsement that she is not residing in the said address. Later, in Ex.P-4 his own letter addressed to the High Commission of India in London, UK, he claimed that his wife was residing at 23, West Gate Close, Canterbury, Kent CT 28JH (the same address is shown in the petition) and thereafter she is not reachable in the said address and on phone, therefore, he requested the said authorities to trace the address and inform him. That itself shows that petitioner was aware that she is not available in the said address. Despite that he took notice to the same address, which was returned un-served with the endorsement that she is not found in that address. Thereafter, he took notice to her by NC: 2024:KHC:23566-DB way of publication in Hindu English newspaper, Bengaluru edition on 28.12.2006.

13. At one breath petitioner claims that respondent was residing in UK and in next breath he claims that she was residing in Mangaluru. Admittedly, the mother of the respondent-wife was residing in Mangaluru. If notice by way of paper publication in any local newspapers which are in circulation in Mangaluru town were taken at least she could have come to know about the proceedings. Therefore, it becomes clear that petitioner-husband with full knowledge that the respondent-wife is not in India, suppressing the said fact, took notice by publication on paper of Bengaluru edition and managed to get a decree of divorce which amounts to abuse of the process of the Court. That also amounts to playing fraud on the Court.

14. The main contention of Sri.P.P.Hegde, learned Senior Counsel is that the appeal itself is not maintainable having rendered infructuous due to petitioner's second marriage and delay in filing the appeal. He submits that the petitioner married after the appeal period, therefore, such marriage is NC: 2024:KHC:23566-DB lawful and by such marriage, the appeal has become infructuous. The perusal of the judgments relied on by him show that in all those cases the appellants therein had contested the matters before the trial Court and despite that, had not preferred the appeal in time, therefore it was held that the appeals have become infructuous. Therefore, the said judgments are not applicable. Further, in this appeal, we are not called upon to decide the validity of the second marriage of the petitioner, we have to answer whether the impugned judgment and decree is sustainable?.

15. It is evident that the petitioner suppressing the fact of respondent living in UK, managed to get the notice published in the newspaper of Bengaluru edition. Secondly, Ex.P-4 shows that he was

aware that respondent-wife was not available in the UK address shown in the petition. That goes to show that he has played fraud on the Court which vitiates the entire proceedings and the impugned decree.

16. So far as the dismissal of Crl.Misc.Nos.42/2016 & 116/2016, according to Sri.Hemanth Kumar D., learned counsel, Crl.Mis.42/2016 was dismissed for non-prosecution. He submits

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NC: 2024:KHC:23566-DB that the daughter of the couple is suffering from some mental health issue and due to her old age, the respondent also could not get further employment. Being unable to maintain herself and her daughter, have taken shelter under with Social Security scheme since August 2019, they are surviving on the advance Social Security payment provided by the Government. To that effect she has filed affidavit and document. He claims that due to such condition she could not prosecute Crl.Mis.No.42/2016 & effectively prosecute Crl.Mis.No.116/2016 or prefer appeal. Moreover, in those cases, it was contended that the petitioner has subjected the respondent to various kinds of abuse and he has failed and neglected to maintain his wife and daughter. This Court accepting such submissions, by order dated 15.06.2022, has awarded interim alimony of Rs.40,000/- per month for the appellant and her unmarried daughter. The said order has attained finality.

17. Further, it is also to be noted that there was 3530 days delay in filing the appeal. To explain the delay, the wife had taken the same contention of the petitioner obtaining the ex parte decree by playing fraud in service of notice. By way of objections to the said applications, the petitioner-husband has

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NC: 2024:KHC:23566-DB taken the same contentions of his remarriage, which was claimed to be valid due to delay in filing the appeal and appeal being not maintainable. This Court, by detailed order dated 18.12.2019, rejected those contentions, allowed the application and condoned the delay. The petitioner did not challenge that order. The Hon'ble Supreme Court in para 34 of the judgment in Erach Boman Khavar vs. Tukaram Shridhar Bhat and another⁴ has held that it is well settled law that the principle of res judicata is applicable between two stages of the same litigation, if the question involved has been decided at the earlier stage of the same litigation.

18. Similarly in paragraph No.10 of the judgment in S.Ramachandra Rao vs. S.Nagabhushana Rao and others⁵, the Hon'ble Supreme Court has held as follows:

"10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is

attracted not only in separate subsequent proceedings but also at the subsequent stage of the same AIR 2014 SC 544 AIR 2022 SC 5317

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NC: 2024:KHC:23566-DB proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of *per incuriam* because that principle applies to the precedents and not to the doctrine of *res judicata*."

(emphasis supplied)

19. In the light of the aforesaid judgments and the fact of this Court condoning the delay and admitting the matter rejecting such contention of the petitioner, the said contention does not sustain. It is material to note that the petitioner did not bother to take care of the daughter for all these years and now he claims that by virtue of his second marriage, appeal has become infructuous. It is submitted that the petitioner has not even paid interim alimony of Rs.40,000/- per month granted by this Court in this case. Under such circumstances, if at all, the appeal has to be dismissed only on the ground of his second marriage, that not only amounts to failure of justice but incentivizing the party who secures a decree by abusing the process of the Court and playing fraud. Further, the trial Court also should have been serious when a 24 years old marriage with a daughter aged 23 years, was sought to be broken. Therefore, it is necessary to give opportunity to the appellant-

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NC: 2024:KHC:23566-DB wife to contest the petition as she cannot be thrown out of the marriage without hearing. Therefore, it is necessary to set aside the order and remand the matter for fresh consideration after giving opportunity to both the parties.

20. The trial Court records themselves show that the notice taken by the petitioner at UK address given in the petition was not served and he himself claimed that the respondent was not traceable in the said address. Despite that, the Court proceeded to hold that the service is sufficient, which was contrary to the petitioner's own document Ex.P-4. On that count also the appeal succeeds. Hence, the following:

ORDER The appeal is allowed with costs.

The impugned judgment and decree dated 23.07.2007 in M.C.No.745/2003 on the file of I Additional Principal Judge, Family Court, Bengaluru City, is hereby set aside. The matter is remanded to the trial Court for fresh consideration.

The parties shall appear before the trial Court without further notice on 12.08.2024, either personally or through their representative.

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NC: 2024:KHC:23566-DB The petitioner shall deposit the arrears of interim alimony awarded by this Court on the date of his appearance. Similarly the respondent-wife shall file her statement of objections on the date of appearance.

On such appearance, the trial Court shall give reasonable opportunity to both the parties and dispose of the matter as expeditiously as possible at any rate within six months from the date of appearance of parties.

If any of the parties fail to appear, the trial Court is at liberty to proceed in accordance with law.

Sd/-

JUDGE Sd/-

JUDGE BSR

Smt S V Shylaja vs Mr N A Anil Kumar on 30 May, 2024

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CRL.RP No. 229 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 229 OF 2022

BETWEEN:

SMT S V SHYLAJA
WIFE OF MR. N.A. ANIL KUMAR
DAUGHTER OF Y. VENKATASWAMY
AGED ABOUT 36 YEARS
RESIDING AT: NO. 1239/1
OPPOSITE POLICE QUARTERS
SARJAPURA, ANEKAL TALUK
BANGALORE - 562 125.

...PETITIONER

(BY SMT.PRAMILA NESARGI, SENIOR COUNSEL
FOR SRI. C JAGADISH, ADVOCATE)

CHANDRASHEKAR AND:

LAXMAN
KATTIMANI MR. N.A. ANIL KUMAR
S/O R. ALLAPPA
HIGH AGED ABOUT 36 YEARS
COURT OF
KARNATAKA R/O: MATHRUKRUPA, NO. 172
8TH CROSS, GANGOTRHRI ROAD
SIT EXTENSION
TUMKUR CITY - 572 102.

...RESPONDENT

(BY SRI. NANDISH GOWDA G B, ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C
PRAYING TO ENHANCE THE INTERIM MAINTENANCE AMOUNT
GRANTED VIDE ORDER DATED 07-08-2020 IN
CRL.A.NO.5004/2020 BY THE III ADDITIONAL DISTRICT AND
SESSIONS JUDGE BENGALURU RURAL DISTRICT AT ANEKAL,
FROM RS. 5000/- (NOW REDUCED TO RS. 4000/- BY THIS
HON'BLE COURT) RS. 75,000/- PER MONTH AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD AND RESERVED ON 04.03.2024, COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE
THE FOLLOWING:

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CRL.RP No. 229 of 2022

ORDER

1. This Revision Petition is filed by the petitioner, being aggrieved by the order dated 07.08.2020 in Crl.A. No.5004/2020 on the file of the III Addl. District and Sessions Judge, Bangalore Rural District sitting at Anekal.
2. The ranks of the parties in the Trial Court will be considered henceforth for convenience. Brief facts of the case:
3. The petitioner is the wife of the respondent. Their marriage was solemnized on 19.10.2014 as per Hindu rites and customs. After the marriage, the petitioner joined her husband and started living in her matrimonial home which is situated at Tumakuru. Initially, all was well and she had been treated well.
4. It is further stated that the respondent started demanding the petitioner to bring property by way of dowry from her parents and her father-in-law also joined with the respondent and started demanding the property in the form of dowry from the petitioner.
5. It is further stated that the petitioner refused to bring dowry and tried to convince the respondent and his father that they should not demand dowry as they themselves are rich enough to maintain the entire family. Further, the petitioner had also been harassed by the respondent and her in-laws that she should not go out of the house without the company of the respondent. Though, she tried to convince that she being a junior Advocate had to attend the office of her senior counsel and requested them to permit her to work as an advocate, however, it was denied.
6. It is further submitted that when the petitioner was unable to forbear the turmoil of the matrimonial home, she informed the said harassment and torture to the family members. The family members and relatives conducted panchayath to settle the issues. However, the respondent and his parents imposed certain conditions to restore her matrimonial house. The petitioner and her father were unable to fulfill their demands, consequently, she was necked out of the matrimonial home.
7. Being aggrieved by the ill-treatment and harassment meted out in her matrimonial home, she approached the Court and filed an application seeking for maintenance on 21.11.2015. Initially, the Court of first instance directed the respondent to pay the maintenance of Rs.2,000/- per month till disposal of the petition. Being aggrieved by the inadequacy of the maintenance, an appeal was preferred to the Appellate Court for enhancement. The Appellate Court enhanced the interim maintenance from Rs.2,000/- to Rs.5,000/- vide its order dated 07.08.2020 in Crl.A.No.5004/2020.
8. The respondent herein being aggrieved by the order of enhancement, filed an application for revision of the said order before this Court. This Court vide its order dated 25.08.2021, in Crl.R.P.No.629/2020 reduced the amount of interim maintenance from Rs.5,000/- to Rs.4,000/-.

9. The said order of interim maintenance attained finality and therefore, there is no dispute in that regard. The interim order passed by this Court by the Co-ordinate Bench is not the subject matter of the petition. Therefore, the petitioner restricted prayer No.3 for separate accommodation at her matrimonial home.

10. Heard Smt. Pramila Nesargi, learned Senior Counsel for Sri.C.Jagadish, learned counsel for the petitioner and Sri. Nandish Gowda G.B., learned counsel for the respondent.

11. It is the submission of the learned Senior Counsel that, the petitioner being the wife of the respondent, she is entitled to have separate accommodation in terms of the provision under Section 17 of the Protection of Women from the Domestic Violence Act, 2005 (for short, "D.V."Act).

12. It is further submitted that the respondent is the only son residing along with his parents at Tumakuru in their own house. The accommodation can be made in the same building where the respondent is residing. The law of domestic violence Act provides certain privileges to the destituted women who are thrown out of the matrimonial house without any reasons by their in-laws.

13. It is further submitted that the petitioner being a well educated and practicing advocate has been necked out of her matrimonial home without any basis. The petitioner has lost her mother recently, and she has no permanent residence to stay. The petitioner is trying to restore the matrimonial obligations and therefore, she intends to stay in the same building where the respondent is living.

14. It is further submitted that the Hon'ble Supreme Court in catena of judgments reiterated that women who approached the Court by invoking the provision under the D.V. Act are entitled to have separate residence where the respondent is living and her residential order should be protected. Further, the leaned Senior Counsel to substantiate her contention relied on the judgments of Hon'ble Supreme Court in the case of SATISH CHANDER AHUJA VS. SNEHA AHUJA¹ & PRABHA TYAGI VS. KAMALESH DEVI².

15. Per contra, learned counsel for the respondent submits that the respondent is not residing with his parents and he is residing along with his aunt at Tumakuru. Further submits that he is ready to provide rental accommodation at Tumakuru and also submits that the maintenance order passed by the Court has regularly being paid to the petitioner.

16. It is further submitted that the respondent even though did his Engineering Degree, he is unemployed and he is AIR 2020 SUPREME COURT 5397 AIR 2022 SUPREME COURT 2331 leading his life on the income of his parents. Even the respondent is facing difficulty to pay the maintenance, however, being a husband, somehow managed to adhere the order of this Court. Making such submissions, learned counsel for respondent prays to dismiss the petition.

17. After having heard learned counsel for the respective parties, it is relevant to refer the definition of "domestic relationship" as stipulated under Section 2 (f) of D.V. Act which reads thus:

"2(F) "domestic relationship" means a relationship between two persons who live or have, any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

18. Similarly, the word "domestic violence" has been defined under Section 3 which reads thus:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child;

and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

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(c) prohibition or restriction to
continued access to resources or

facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence"

under this section, the overall facts and circumstances of the case shall be taken into consideration."

19. On conjoint reading of the above said provisions, it can be inferred that the relationship between the two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, or marriage, or relationship in the nature of marriage. For the purpose of defining the domestic violence, the Act itself categorized four types of abuses viz., physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

20. Section 2(s) of the Act defines "shared household"

which means a household where the person aggrieved lives or at any stage, he has lived in a domestic relationship either singly or along with the respondent in any form of residence, the aggrieved person has right in the shared household.

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21. Section 17 of the Act defines that "every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same." Further, it defines, "the aggrieved person shall not be evicted or excluded from the shared household."

22. In the present case, the petitioner states that she was residing with her in-laws along with the respondent in the house situated at Tumakuru. It is also admitted fact that she is the wife of the respondent. It is further noticed in the averments of the petition that she has been subjected to cruelty and harassment at the hands of respondent and her in-laws. Further, it is stated in the petition that she had lodged a complaint before the Sarjapura Police, Bangalore for the offence under Section 498(A) read with 149 of IPC and Sections 3 and 4 of Dowry Prohibition Act. The jurisdictional police after conducting the investigation, submitted the charge sheet. The case is pending for adjudication.

23. Prima-facie, this Court is satisfied that the petitioner has been subjected to cruelty as defined under Section 3 of the Act and she is entitled for the protection order along with residential order. Now, it is relevant to refer the

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judgment of the Hon'ble Supreme Court in the case of Sathish Chander Ahuja as stated supra in paragraph number 43 which read thus:

"43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act. The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

- (a) Any relationship by consanguinity is a lifelong relationship.
- (b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.
 - (i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.
 - (ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during

marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.

(iii) That is why, the expression 'domestic relationship' has been defined in an expansive manner to mean a relationship between two persons who live or have at any point of time lived together in a shared household when they are related by marriage. We have also interpreted the word 'live' or 'lived' in the context of right to reside in Sub-Section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the D.V. Act.

(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

(c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.

(d) In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been ousted in any way or has been a victim of domestic violence has remedies under the D.V. Act.

In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also a past domestic relationship. Therefore, the Parliament has intentionally used the expression 'domestic relationship' to mean a relationship between two persons who not only live together in the shared household but 56 also between two persons who 'have at any point of time lived together' in a shared house hold."

24. On careful reading of the dictum of the Hon'ble Supreme Court, it can be gathered that the expression 'family members living together as a joint family' not only restricted to the definition of the joint family as stated under the Hindu Law, however, it includes the persons living together jointly as a family in a shared household at any point of time along with the aggrieved person.

25. In the present case, the petitioner has proved that she was living with the respondent and her in-laws in the matrimonial home for a considerable length of time. Therefore, she is entitled for shared household in the matrimonial home.

26. In the light of the observations made above, I proceed to pass the following:

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ORDER i. The petition is allowed in part.

ii. The petitioner is entitled to have residential order as defined under Section 17 of the Act.

iii. The Trial Court is directed to take appropriate measures to provide separate residence in her matrimonial home and it is needless to say that the order of residence to be protected in terms of Section 18 of the Act.

iv. The registry is directed to send the copy along with the documents forthwith for effective implementation of this order.

Sd/-

JUDGE JS/-

Smt. Sahana T. S vs Smt. Shilpasree T. C on 22 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:22869
CRL.P No. 6225 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 6225 OF 2018 (482)

BETWEEN:

1. SMT. SAHANA T. S.
W/O KALLINATHA H D, AGED ABOUT 32 YEARS,
2. SRI. KALLINATHA H D
S/O LATE B.DODDAIAH, AGED ABOUT 35 YEARS,

BOTH PERMANENT RESIDENT OF MANOGNA,
1ST MAIN ROAD, 3RD CROSS, 1ST PARALLEL ROAD,
BEHIND DATTATREYA TEMPLE, JAYANAGAR WEST,
SHETTIHALLI, TUMKUR-572101

...PETITIONERS

(BY SRI. VINAY SINGH.M., ADVOCATE)

AND:

1. SMT. SHILPASHREE T. C.
Digitally signed by KIRAN KUMAR R Location: HIGH COURT OF KARNATAKA
W/O GIRISHA, AGED ABOUT 27 YEARS,
RESIDENT OF T.P.K.ROAD,
RAGHAVENDRA NAGARA, TUMKUR-573201.
2. THE STATE OF KARNATAKA
BY WOMEN POLICE STATION,
TUMKUR-572101
REPRESENTED BY ITS SPP,
HIGH COURT OF KARNATAKA,
BENGALURU-560001

... RESPONDENTS

(BY SMT.M.L.KRUTHIKA FOR
SRI. K.V.NARASIMHA, ADVOCATE FOR R-1;
SMT. ANITHA GIRISH, HCGP FOR R-2)

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NC: 2024:KHC:22869
CRL.P No. 6225 of 2018

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE PROCEEDINGS IN C.C.NO.141/2018 (CR.NO.3/2018) REGISTERED BY RESPONDENT WOMEN POLICE STATION, TUMAKURU PENDING ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M., TUMAKURU FOR THE ALLEGED OFFENCE PUNISHABLE UNDER SECTION 498-A, 323, 504, 354 AND 307 READ WITH 34 OF IPC AND SECTION 3 AND 4 OF DOWRY PROHIBITION ACT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Learned counsel for the petitioners files a memo enclosing a copy of a decree of divorce granted in M.C.No.231/2019, to which the first respondent-wife is a party. In this compromise petition, it is agreed upon by the complainant-wife that she would withdraw the petition that she had filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and also for quashing of the proceedings in C.C.No.141/2018, against which this petition has been filed.
2. In view of the fact that the husband and wife have settled their differences and a decree of divorce is also granted dissolving the marriage, no useful purpose would NC: 2024:KHC:22869 be served by continuing the proceedings, which are essentially private in nature. The proceedings are, therefore, quashed.
3. In light of the fact that the wife has agreed for quashing of the entire proceedings, notwithstanding the fact that the husband and other accused are not made parties to this petition, the entire proceedings, including against the husband and other accused, shall also stand quashed.

Sd/-

JUDGE GSR

Smt. Sangeeta W/O Genappa Lakkundi vs Shri. Genappa S/O Parappa Lakkundi on 14 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

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NC: 2024:KHC-D:7993
CP No. 100077 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 14TH DAY OF JUNE, 2024
BEFORE
THE HON'BLE MR JUSTICE M.G.S. KAMAL
CIVIL PETITION NO.100077 OF 2024

BETWEEN:

SMT. SANGEETA W/O. GENAPPA LAKKUNDI
AGE: 39 YEARS, OCC: HOUSEHOLD WORK,
R/O: OPP. ROSTAN APARTMENT,
NEAR K.C.PARK, DHARWAD,
TQ. AND DIST. DHARWAD.

...PETITIONER
(BY SRI.MALLIKARJUN C.HIREMATH, ADVOCATE)

AND:

SHRI. GENAPPA S/O. PARAPPA LAKKUNDI
AGE: 44 YEARS, OCC: ENGINEER AT BENGALURU
NOW R/O: KHAN TOTA,
BEHIND VEERANARAYAN GUDI,
GADAG, TQ. AND DIST: GADAG-582101.

...RESPONDENT

Digitally
signed by V N (RESPONDENT SERVED)
BADIGER
Location: High
Court of
Karnataka

THIS CIVIL PETITION IS FILED U/SEC.24 OF CPC, PRAYING TO
ALLOW MY CIVIL PETITION BY WITHDRAWING THE M.C.NO.43/2024
PENDING ON THE FILE OF PRINCIPAL FAMILY COURT, GADAG AT

GADAG AND TO TRANSFER THE COURT OF PRINCIPAL FAMILY
COURT DHARWAD AT DHARWAD FOR ADJUDICATE BOTH MATTERS
WITH PERFECT AND MEANINGFUL MANNER IN THE INTEREST OF
JUSTICE AND EQUITY.

THIS CIVIL PETITION COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:7993
CP No. 100077 of 2024

ORDER

1. Present petition is by the wife seeking transfer of the matter in M.C.No.43/2024 on the file of the Principal Family Judge, Gadag, filed by the respondent-husband against the petitioner for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, to the Family Court in Dharwad.
2. Case of the petitioner is that her marriage with the respondent was solemnized on 09.03.2014 at Akkanabalaga Kalyan Mantap, D.C. Compound, Dharwad, as per the customs and traditions prevailing in their community. That the petitioner gave birth to a male child on 14.10.2015 at Dharwad. That due to harassment from her husband and mother-in-law, dispute arose between the petitioner and the respondent-husband. That the petitioner and the respondent are residing separately. Petitioner-wife filed Crl.Misc.No.69/2022 on the file of the Principal Civil Judge (Jr.Dn.), Dharwad under Sections 12, 18, 19, 20, 22 of Protection of Women from Domestic Violence Act, 2005. That the petitioner-wife is residing with her parents at Dharwad, NC: 2024:KHC-D:7993 which is about 85 kms away from Gadag, where the respondent-husband resides and has now filed the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.
3. Heard and perused the matter.
4. Section 19 of the Hindu Marriage Act, 1955 provides that petition for divorce be filed within the jurisdiction of the Court where the respondent at the time of presentation of the petition resides. That apart, petitioner- wife is residing at 85 kms away from Gadag. She has also initiated the proceeding in Crl.Misc.No.69/2022 at Dharwad and the same is pending consideration.
5. In view of the above factual and legal aspects of the matter, this Court is of the considered view that the present petition in M.C.No.43/2024 pending on the file of Principal Family Judge, Gadag be withdrawn and presented before the Court at Principal Family Court, Dharwad, where the petitioner-wife is residing.
6. Petition is accordingly allowed.

NC: 2024:KHC-D:7993

7. Since the parties are represented by their respective counsels, they shall appear before the Principal Family Court, Dharwad, on 10.07.2024 without any further notice.

8. In view of the disposal of the main petition, pending IAs. do not survive for consideration and are disposed of.

SD/-

JUDGE KGK

Smt. Soubhagya Alias Lingaraddi D/O ... vs Shri Shrinivas S/O LakshmiKant Deshi on 1 April, 2024

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NC: 2024:KHC-D:5987
CP No. 100193 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 1ST DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL
CIVIL PETITION NO. 100193 OF 2023

BETWEEN:

SMT. SOUBHAGYA LINGARADDIM,
D/O. LAXMAN LINGARADDI,
AGE: 33 YEARS, OCC: HOSUE HOLD WORK/
PRIVATE SERVICE,
R/O. 27, VIVEKANAND COLONY,
NEAR SAMUEL SCHOOL, SAI NAGAR,
MUDHOL-587311, TQ: MUDHOL,
DIST: BAGALKOT.

...PETITIONER

(BY SRI. D. M. MALLI, ADVOCATE)

AND:

SHRI. SHRINIVAS S/O. LAKSHMIKANT DESHI,
AGE: 37 YEARS, OCC: PRIVATE SERVICE,
R/O. 202, VANDANA SAROVAR,
80FT ROAD, JAKKASANDRA, 1ST BLOCK,
KORAMANGALA, BANGALORE-560034.

...RESPONDENT

Digitally signed
by ROHAN
HADIMANI T
Location: HIGH
COURT OF
KARNATAKA

(BY SMT. KAVERI KURUVATTI, ADVOCATE)

THIS CIVIL PETITION IS FILED U/SEC.24 OF CPC, 1908,
PRAYING TO ALLOW PRESENT PETITION AND TRANSFER THE
M.C.NO.6100/2023 PENDING BEFORE THE IV ADDL. PRL. JUDGE
FAMILY COURT, BANGALORE, BANGALORE SOUTH, BANGALORE
FILED BY THE RESPONDENT, TO SENIOR CIVIL JUDGE AND JMFC,
MUDHOL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 24 of CPC seeking to transfer M.C.No.6100/2023 pending on the file of IV Additional Principal Judge, Family Court, Bengaluru to the Senior Civil Judge and JMFC, Mudhol.

2. Heard the learned counsel Sri.D.M.Malli, for the petitioner and the learned counsel Smt.Kaveri Kuruvatti, for the respondent.

3. Learned counsel for the petitioner submits that the petitioner-wife is residing at Mudhol along with her parents due to serious marital dispute and harassment by the respondent- husband. It is submitted that the petitioner is a Software Engineer doing work-from-home from Mudhol and taking care of her aged parents. It is further submitted that the petitioner has filed Criminal Mis.No.321/2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the said case is pending before the Principal Civil Judge and JMFC, Mudhol. It is also submitted that now the petitioner is residing at Mudhol along with her parents and nobody is there to take care of the aged parents and it would be difficult for her to NC: 2024:KHC-D:5987 travel from Mudhol to Bengaluru to attend the proceedings instituted by her husband hence, he seeks to allow the petition.

4. Per contra, learned counsel for the respondent submits that the petitioner has made false averments in the petition and she has not approached the Court with clean hands. It is submitted that both the petitioner and respondent are working as Software Engineers at Bengalur in different companies and the present petition is filed with ulterior motive to put the respondent into further harassment. It is further submitted that the petitioner has falsely stated that she is residing at Mudhol by suppressing the fact that her brother is a Software Engineer taking care of her parents. It is also submitted that the petitioner left the matrimonial home within a short span of time without any reason by causing harassment to the respondent-husband. It is contended that the notice issued by the Court in M.C.No.6100/2023 sent to the petitioner's address at Mudhol has been returned back with an endorsement that no one resides in the said place, which clearly establishes that the petitioner is not residing at Mudhol and subsequently the said notice was served to the office address of the petitioner. It is further contended that the NC: 2024:KHC-D:5987 petitioner is residing in Paying Guest at Bengaluru and attending the office work and it would be difficult for the respondent-husband to travel to Mudhol, hence seeks to dismiss the petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and meticulously perused the material available on record.

6. The pleadings and material available on record indicate that the marriage between the petitioner and respondent was solemnized on 12.02.2023. There are serious allegations made by the parties to

the proceedings against each other. Admittedly, the petitioner-wife has instituted the proceedings in Crl.Misc.No.321/2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the said proceedings is pending before the Principal Civil Judge and JMFC, Mudhol. The pleadings and material available on record further indicate that the petitioner is a Software Engineer and doing work-from-home at Mudhol. The petition averments further indicate that the petitioner is taking care of her aged parents and residing with them at Mudhol. Insofar as the NC: 2024:KHC-D:5987 contention that the notice sent by the Family Court in M.C.No.6100/2023 was returned with a shara that the no one is residing at the address and subsequently the said notice is served on the office address of the petitioner at Bengaluru is evident from the records, however the petitioner on oath has made a statement in the petition that she is residing along with her parents at Mudhol and working from home, hence, there is no reason to disbelieve the averments of petition and the contrary contentions urged by the respondent has no merit consideration.

7. Admittedly, the respondent-husband is required to attend the Crl.Misc.321/2023 pending on the file of Prl.Civil Judge & JMFC, Mudhol. Keeping in mind the convenience of both the parties and also with an object to avoid multiplicity of proceedings, it would be just and proper to transfer M.C.No.6100/2023 pending before the Family Court, Bengaluru to the competent Court at Mudhol. This Court has kept in mind the convenience of the parties, more particularly, the convenience of the petitioner-wife as she is taking care of her aged parents and with an object of adjudication of two proceedings at one place as the issue involved in both the NC: 2024:KHC-D:5987 proceedings are interdependent, hence, it is desirable that they are tried by the competent Court at one place.

8. It would be useful to refer the decision of the Hon'ble Supreme Court in the case of N.C.V.Aishwarya v. A.S.Saravana Karthik Sha reported in AIR 2022 SC 4318 wherein the Hon'ble Supreme Court at paragraph No.9 as held as under:

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

9. In a petition under Section 24, the convenience of the parties is required to be taken into consideration. It is well settled in law that though Section 24 of the Code of Civil Procedure confers power on Court to transfer proceeding, yet NC: 2024:KHC-D:5987 this power has to be exercised with circumspection and care. Convenience of the parties has to be taken into account. In the case of 'RAJWINDER KAUR vs. BALWINDER SINGH' in (2003) 11 SCC 726, Hon'ble Supreme Court had directed transfer of proceeding taking into account the fact that wife was required to travel long distance and was required to take care of daughter aged four years. Similarly, in the case of 'SUMITA SINGH VS. KUMAR SANJAY AND ANOTHER' in AIR 2002 SC 396, Hon'ble Supreme

Court observed that it was the husband's suit against wife and, therefore, convenience of wife has to be taken into account and in the case of 'RAJANI KISHOR PARDESHI VS. KISHOR BABULAL PARDESHI' (2005) 12 SCC 237, wherein it has been held that in a matrimonial dispute, convenience of the wife is of the paramount consideration.

10. It is pertinent to state that there cannot be any straight jacket formula that can be adopted in order to determine the transfer of proceedings. Keeping in mind the likely inconvenience to be caused to the petitioner-wife, the distance from Mudhol to Bengaluru is more than 500 km., and also the fact that the proceedings instituted by the petitioner is NC: 2024:KHC-D:5987 pending before the competent Court at Mudhol, and in order to avoid any hardship to the petitioner-wife, this Court is of the considered view that it is a fit case to transfer M.C.No.6100/2023 pending on the file of IV Additional Principal Judge, Family Court, Bengaluru to the Senior Civil Judge and JMFC, Mudhol. Hence, I proceed to pass the following:

ORDER i. Civil Petition is allowed.

ii. M.C.No.6100/2023 now pending on the file of IV Additional Principal Judge, Family Court, Bengaluru is withdrawn from the said Court and made over to the Senior Civil Judge and JMFC, Mudhol for trial in accordance with law.

Sd/-

JUDGE BSR Ct-an

Smt. Sudhabai vs Smt. Rashmi V Rao on 2 April, 2024

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NC: 2024:KHC-D:6036
CRL.RP No. 100464 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 2ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100464 OF 2023 (397)

BETWEEN:

SMT. SUDHABAI W/O LATE P. SESAGIRIRAO,
AGED: 8 YEARS, OCC: NIL,
HAVING ADDRESS AT FLAT NO. 16,
"PRABHA SMRITI", PRABHA SMRITI CHS LTD.,
PLOT NO. 135, HISSA NO. 15, MULUND (E), MUMBAI-81

- PETITIONER

(BY SRI S.S. BETURMATH, ADVOCATE)

AND:

SMT. RASHMI V. RAO,
(MAIDAN NAME: RASHMI V KALLAPUR),
AGED: 45 YEARS, OCC: NIL,
PRESENTLY RESIDING AT H.NO 46 ,
ARJUNVIHAR, GOKUL ROAD, HUBBALLI-30.

- RESPONDENT

Digitally signed (BY SMT. RASHMI V. RAO (PARTY-IN-PERSON))
by SAROJA
HANGARIKI

Location: HIGH COURT OF KARNATAKA DHARWAD BENCH DHARWAD ADDL. DIST. & SESSIONS JUDGE, DHARWAD AND SPECIAL COURT FOR TRIAL OF THE OFFENCES UNDER THE POCSO ACT AND SC AND ST (POA) ACT & ETC.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 19.03.2024, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

Revision petitioner/ respondent No.3 feeling aggrieved by the judgment of first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and SC. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018, preferred this revision petition.

2. Parties to the revision petition are referred with their ranks as assigned in the trial Court for the sake of convenience.

3. Heard the arguments of both sides.

4. After hearing the arguments of both sides and on perusal of trial Court records, so also the impugned judgment under appeal, the following points arise for consideration.

1) Whether the impugned order under revision passed by the first appellate Court in setting aside the order of the trial Court on the file of Prl. Civil Judge & JMFC, Dharwad in C.C. No. 123/2017 dated

05.11.2018, is perverse, capacious and legally not sustainable?

2) Whether interference of this Court is required?

NC: 2024:KHC-D:6036

5. The petitioner had filed Crl. Misc. No. 123/2017 against the respondent No.1 and others seeking monetary reliefs in terms of Section 20 and 28 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'P.W.D. Act' for brevity) read with Sec. 125 of Cr.P.C. for recovery of maintenance amount of Rs.7,05,600/- with interest which is due from 29.08.2009 to 12.04.2014 as per the order passed in Crl. Misc. No. 85/2009 on the file of JMFC-I Court, Hubballi. The marriage of petitioner with respondent No.1-Venkatesh was solemnized on 28.06.2007. The respondents No.2 and 3 are the parents of respondent No.1. The petitioner was residing with respondents at Mumbai after the marriage. After some time of marriage there was misunderstanding between the spouse and the respondents started abusing and dominating the petitioner, ultimately she was driven out from matrimonial home. The petitioner had filed Crl. Misc. No. 85/2009 on the file of JMFC-I, Hubballi. In the said case there was interim order of maintenance of Rs.10,000/- per month vide order dated 13.01.2012. Thereafter, there was compromise between the petitioner and respondent No.1 and the petitioner agreed to withdraw the petition in Crl. Misc. No. NC: 2024:KHC-D:6036 85/2009 which was closed as 'compromised' on

12.04.2014. However, the petitioner soon realized that the respondent No.1 took her back only to avoid paying arrears of maintenance and not intended to lead marital life with her. The respondents continued ill treatment to the petitioner and again she was driven out from the matrimonial home. In the meantime, the respondent No.1 passed away on 23.05.2017. He was serving as Manager in E-Clerx, Mumbai drawing salary of Rs.2,00,000/- per month. He has also made several investments in the bank as well as financial institutions for himself and also for his parents. The petitioner being widow of deceased respondent No.1, is entitled for attachment of assets of respondent No.1 for recovery of interim maintenance. Therefore, prayed for allowing the petition.

6. Respondents No.2 and 3 have appeared through their counsel and the respondent No.3 had filed objections admitting relationship of petitioner with respondent No.1 who died due to heart attack on 23.05.2017 at Singapore. It is also further admitted that maintenance amount of Rs.10,000/- was awarded in Crl. Misc. No. 85/2009. It is further contended that the compromise between the petitioner and respondent No.1 NC: 2024:KHC-D:6036 was not a conditional compromise and the petitioner did not recover arrears of maintenance during the lifetime of respondent No.1. The petitioner herself got stayed release of death benefits as per interim order dated 13.06.2017 in Crl. Misc. No. 17/2017. The recovery petition itself is not maintainable against dead respondent No.1 and in view of the compromise between the petitioner and respondent No.1, the petitioner cannot enforce recovery of maintenance amount. Therefore, prayed for dismissing the petition.

7. The trial Court by common order in Crl. Misc. No. 123/2017 and Crl. Misc. No. 124/2017 dated 05.11.2018 dismissed the petitions as not maintainable in view of the compromise between the petitioner and respondent No.1 and the arrears of maintenance cannot be enforced against a dead person. The petitioner has challenged said order before the first appellate Court in Crl. A. No. 100/2018. The first appellate Court after hearing the arguments of both sides and on appreciation of the material evidence, allowed the appeal, set aside the order of trial Court and held that petitioner is entitled to recover interim maintenance of Rs.10,000/- per month from 29.09.2009 to 12.04.2017 with interest at 12% p.a. from the NC: 2024:KHC-D:6036 date on which the said amount falls due from the assets including the service benefits left behind by the respondent No.1.

8. The genesis of dispute between the parties arose from initiation of proceedings by petitioner in Crl. Misc. No. 85/2009 U/s 12 of P.W.D. Act. The trial Court by order dated 08.09.2009 passed ex parte interim order of maintenance of Rs.15,200/- Ex.P.9. On appearance of respondent and after hearing both sides, the trial Court has modified the order of maintenance and reduced interim maintenance amount to the extent of Rs.10,000/- per month vide order dated 13.01.2012. The petitioner had also obtained the decree of Restitution of Conjugal Rights on the file of Prl. Judge, Family Court, Hubballi in M.C. No. 202/2012 vide judgment dated 20.11.2014. It is thereafter a joint memo was filed on 12.04.2014 seeking reference to the Lok Adalaath. It is stated that the claim of the parties against each other does not survive and exist and hence the petitioner and respondent No.1 intended to seek disposal of the matter. The matter was referred to Lok Adalaath and in the Lok Adalaath pursuant to the decree in M.C. No. 202/2012, petitioner and respondent No.1 agreed to live together jointly NC: 2024:KHC-D:6036 and therefore petition in Crl. Misc. No. 85/2009 was closed as settled. The records also would go to show that petitioner had filed M.C. No. 153/2016 on 25.06.2016-Ex.P.4 on the file of Family Court, Hubballi for seeking decree of divorce. In view of the

death of respondent No.1 on 23.05.2017, the said petition was closed. The petitioner has filed Crl. Misc. No. 123/2017 to recover the arrears of maintenance from 08.09.2009 to 12.04.2014 amounting to Rs.7,05,600/-.

9. Learned counsel for respondent No.3 has argued that no order can be passed against a dead person. Secondly, petitioner herself filed memo dated 16.10.2017 in Crl. Misc. No. 85/2009 'as not pressed'. Thirdly, petitioner cannot revive her claim in a closed case which is legally not permissible and lastly the testamentary petition, i.e., suit, is filed by the petitioner in O.S. No. 175/2017 before the Hon'ble Bombay High Court. Therefore, contended that recovery petition itself is not maintainable as was rightly held by the trial Court.

10. Per contra, petitioner/ party-in-person has argued that her husband-respondent No.1 persuaded her that he intended to join the company of petitioner in terms of the decree in M.C. NC: 2024:KHC-D:6036 No. 202/2012 provided she withdraw her petition in Crl. Misc. No. 85/2009. It is because of such condition put by the respondent No.1 and the petitioner who wished to lead her marital life with respondent No.1, agreed to withdraw the petition filed by her in Crl. Misc. No. 85/2009. The petitioner has not given up her accrued right of recovery of maintenance amount, since respondent No.1 was duty bound to provide maintenance amount due to the petitioner. The respondent No.1 was never intended to lead marital life with the petitioner, but only to deprive the petitioner from reaping the benefit of maintenance amount granted to the petitioner offered to join petitioner. Therefore, she has got every right to recover arrears of maintenance amount as she has no any independent source of income and she has been driven out of the matrimonial home.

11. The petitioner/party-in-person has contended that the revision petition itself is not maintainable. In support of such contention, she relied on the order of Hon'ble Rajasthan High Court, Bench at Jaipur in Vishal Kochar son of Harish Vs. Smt. Pulkit Sahni wife of Vishal Kochar (S.B. Criminal Revision Petition No. 462/2021 dated 22.04.2022). In NC: 2024:KHC-D:6036 the said case before the Rajasthan High Court, it was a case arising out of maintenance proceedings U/s 125 Cr.P.C. and therefore it was held that "grant of maintenance amount pending disposal of the maintenance petition U/s 125 Cr.P.C., the revision petition is not maintainable." Whereas the present proceeding has arisen out of the provisions under the P.W.D. Act. In Vishal Kochar (supra), it has been observed at paragraph Nos.11 and 12 as under:

"11. So far as the provisions of the Act of 2005 are concerned, under Section 12 of the Act an aggrieved person can file an application to seek various reliefs including monetary relief i.e. relief of maintenance under section 20 of the Act. Section 23 of the Act of 2005 empowers the Magistrate to pass an interim order as he deems just and proper in any proceeding pending before him. Section 29 of the Act provides for an appeal to the Court of Session against an order passed under this Act and it does not exclude an interim order from its ambit.

12. The order of interim maintenance under the provisions of Act 2005 does not terminate the proceedings finally. The matter remains sub judice and rights and liabilities of the parties are not decided in finality. Though, in such circumstances, the

interim order of maintenance is in the nature of interlocutory order, yet it is appealable as per Section 29 of the Act 2005. In the case of Amir Khan vs State of Rajasthan and Others (supra), it was held that such interim order is appealable under Section 29 of the Act of

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NC: 2024:KHC-D:6036 2005, and a criminal revision petition is maintainable against the final order of appellate Court. This judgment stands on different set of laws i.e., Act 2005 and does not deal with the question of maintainability of revision against interlocutory order, hence, it cannot be applied with regard to the orders of interim maintenance passed under Section 125(1) of Cr.P.C."

The Hon'ble Rajasthan High Court, Bench at Jaipur, having so observed has held that, in view of the appeal remedy as being provided under the P.W.D. Act, the revision is maintainable. However, as against the interim order passed U/s 125 Cr.P.C. being interlocutory order, the revision petition is not maintainable. Therefore, the contention of petitioner/ party-in- person that revision petition itself is not maintainable, cannot be legally sustained.

12. The first appellate Court by referring to the judgment of this Court in Venkatesh M. Versus Smt. Yellamma decided on 18.09.2020 (R.P.F.C. No. 37/2015), has rightly held that petition for recovery of interim maintenance amount awarded under the provisions of P.W.D. Act, is not barred by limitation.

13. The first contention of the respondent No.3 is that no order can be passed against a dead person. It is true that

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NC: 2024:KHC-D:6036 husband of the petitioner, i.e., respondent No.1, died on 23.05.2017. The order of interim maintenance was passed on 13.01.2012-Ex.P.7. However, the respondent No.1 did never bothered to pay the interim maintenance amount, instead he challenged the maintenance amount granted in Crl. Misc. No. 17/2016 against which, petition was filed by the petitioner in Crl. Misc. No. 124/2017. In appeal in Criminal Appeal No. 102/2016, the first appellate Court has enhanced the amount to Rs.25,000/-.

14. The petitioner has sought for enforcement of the order of maintenance against the assets of deceased respondent No.1 and not against respondents No.2 and 3 individually. The right of the petitioner in seeking interim maintenance has been already adjudicated and the amount of maintenance has been determined to which the petitioner is entitled. If for any reason the respondent No.1 fails to pay arrears of maintenance or in the present case in view of the death of respondent No.1, the petitioner is entitled to enforce her right to recover the arrears of maintenance to which she is entitled. The petitioner is also entitled to recover either from the service benefits of respondent No.1 or from the assets which she inherits from

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NC: 2024:KHC-D:6036 respondent No.1. Therefore, the first contention of respondent No.3 that no order can be passed against a dead person, cannot be legally sustained.

15. The second contention of the respondent No.3 is that petitioner herself has filed a memo dated 16.10.2017 in Crl. Misc. No. 85/2009 as not pressed (it should have been 11.10.2017). Indisputably, the said memo was filed by the petitioner since respondent No.1 expressed his willingness to join the company of the petitioner pursuant to the judgment- Ex.P.2 and decree-Ex.P.3 in M.C. No. 202/2012 dated 20.01.2014. On the date of filing the said memo, the order of interim maintenance dated 13.01.2012 was already in force and she did never give up her claim regarding recovery of arrears of maintenance. If at all the respondent No.1 was firm in continuing his marital relationship with the petitioner pursuant to the judgment and decree in M.C. No. 202/2012 and led marital life, then there would have been no occasion for the petitioner to file Crl. Misc. No. 123/2017 for recovery of arrears of maintenance. Indisputably, petitioner was forced to file divorce petition against respondent No.1 under M.C. No. 153/2016 on 25.06.2014-Ex.P.4. If the same is calculated

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NC: 2024:KHC-D:6036 from the date of memo, on 12.04.2014, to the date of filing of M.C. No. 153/2016 on 25.06.2016-Ex.P.4, then it would go to show that within a period of two years one month and 14 days, the petitioner was forced to file petition against respondent No.1 for seeking decree of divorce. However, in view of unfortunate death of respondent No.1, the said petition was closed. The said proceedings and the earlier conduct of respondent No.1 in not complying the interim order passed by the Court would only demonstrate the fact that respondent No.1 took the petitioner to matrimonial home pursuant to decree in M.C. No. 202/2012-Ex.P.3, only in order to escape from paying the interim maintenance amount awarded by the Court. Therefore, the said contention of respondent No.3 that in view of the memo of petitioner herself in Crl. Misc. No. 85/2009 and the petition being disposed off, the claim of petitioner for enforcement of interim maintenance is unsustainable in law and cannot be accepted.

16. The next contention of respondent No.3 is that revival of claim in closed case is not permissible. Indisputably, Crl. Misc. No. 85/2009 was closed as not pressed by order dated 16.10.2017. The petitioner/ party-in-person has submitted

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NC: 2024:KHC-D:6036 that as per the oral direction of the Presiding Officer she had filed separate petition for recovery of arrears of maintenance in Crl. Misc. No. 123/2017 and hence she filed a memo in Crl. Misc. No. 85/2009 as not pressed. If this was not to be the reason for filing the memo and simplicitor, the petitioner was to file memo as not pressed, there was no occasion or reason for the petitioner to file Crl. Misc. No. 123/2017 for enforcing her right to recover the arrears of interim maintenance amount. Therefore, the contention of respondent No.3 that revival of claim in a closed case is not permissible, also cannot be legally sustained.

17. The last contention of respondent No.3 is that petitioner has already filed testamentary petition in O.S. No. 175/2017 before the Hon'ble Bombay High Court and if the recovery petition is enforced to recover the amount from the assets of respondent No.1, then it will amount to granting double benefit to the petitioner. The subject matter involved in testamentary petition before the Hon'ble Bombay High Court with respect to the share of the parties to the said proceedings is totally a different matter than the claim of recovery of arrears of maintenance which the respondent No.1 is bound to pay. The

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NC: 2024:KHC-D:6036 petitioner is not asking for any maintenance either from the income or the property of respondent No.3. The petitioner is only seeking enforcement of accrued right to recover the arrears of maintenance as per the order in Crl. Misc. No. 85/2009 dated 13.01.2012. Therefore, the contention of respondent No.3 that petitioner is getting double benefit in the subject property in testamentary petition, i.e., suit O.S. No. 175/2017 and in the present recovery petition to get double benefit, cannot also be legally sustained.

18. The another grievance of respondent No.3 is that the first appellate Court has committed serious error in granting 12% interest on the arrears of maintenance. The petitioner/ party- in-person has argued that respondent No.1 during his lifetime did not pay the arrears of maintenance whenever it fell due and she has to incur expenses for her sustenance. Therefore, the respondent No.3 is liable to pay the interest out of the service benefits of her husband, the respondent No.1.

19. Indisputably, husband of the petitioner, i.e., respondent No.1 died on 23.05.2017. The petitioner herself got stay order in Crl. Misc. No. 124/2017 dated 13.06.2017 withholding

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NC: 2024:KHC-D:6036 disbursement of service benefits of respondent No.1. The respondent No.3 is age old mother-in-law of petitioner and she did not receive any service benefits of her son when the interim maintenance was ordered or also when the petition was closed. The first appellate Court has not assigned any valid reason for grant of interest. If 12% interest is ordered on the arrears of maintenance, then by this time it will work out to more than double of the arrears of maintenance, for no fault of respondent No.3. The mother-in-law of petitioner is now at an advanced age and lost her husband and also her son, further so far she has not received any service benefits of her deceased son. The testamentary suit between petitioner and respondent No.3 under O.S. No. 175/2017 is pending on the file of Hon'ble Bombay High Court, wherein the rights of parties in the assets including the service benefits of deceased respondent No.1 will be decided. If these factors are taken into consideration, then the grant of interest on the arrears of maintenance claimed by the petitioner cannot be legally sustained. I find sufficient force in the contention of the learned counsel for the respondent No.3 that if interest on arrears of maintenance amount is granted, then it will amount to granting double benefit to the

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NC: 2024:KHC-D:6036 petitioner out of the service benefits of her husband, respondent No.1, to which the respondent No.3 is also entitled for her right of share. Therefore, under these circumstances respondent No.3 can not be penalized to pay the interest on arrears of maintenance claimed by the petitioner. Therefore, to the extent of grant of interest on the arrears of maintenance, interference of this Court is required. Consequently, proceed to pass the following order.

ORDER The revision petition filed by the revision petition/ respondent No.3 is hereby partly allowed.

The judgment of the first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and S.C. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018 is modified as under:

The grant of interest at the rate of 12% p.a. as awarded by the first appellate Court is hereby set aside.

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NC: 2024:KHC-D:6036 The order of the first appellate Court that petitioner/ party-in-person is entitled for recovery of maintenance amount of Rs.10,000/- per month from 29.08.2009 to 12.04.2014 stands confirmed.

Registry to send a copy of this order to the trial Court along with the records, for compliance of this order.

Sd/-

JUDGE BVV CT:GSM

Sri A Ramesh Babu vs Smt Dharani S on 28 June, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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Reserved on : 04.06.2024
Pronounced on : 28.06.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3578 OF 2022

BETWEEN:

1. SRI. A.RAMESH BABU
S/O L.ANANTHAKRISHNAN
AGED ABOUT 68 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI - 638 301.
2. SMT.R.SHASHIKALA
W/O A.RAMESH BABU
AGED ABOUT 66 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI - 638 301.
3. MR. R.CHANDRASHEKAR
S/O RAMESH BABU
AGED ABOUT 43 YEARS
R/AT NO.303, 3RD FLOOR
MITHRA RAJI RESIDENCY
IDGAH ROAD, BEHIND GOVT. SCHOOL
VARTHUR VILLAGE, BENGALURU - 560 087

SHOWN IN THE PETITION AS:
NO. 144, PLALANIPURAM

2

1ST STREET, BHAVANI - 638 301.

... PETITIONERS

(BY SRI. AMAR CORREA, ADVOCATE)

AND :

SMT. DHARANI S.,
W/O VIJAY BABU WAGMARE
D/O SWAMI RAO SAMPATH
AGED ABOUT 30 YEARS
R/AT NO. G-3, PHASE-3
LAKE VIEW APARTMENTS
KAREGUDDAPDAHALLI
CHIKBANAWARA POST
L.MARK, GANGADHARAIH
KALYANA MANTAPA
BENGALURU - 560 090.

... RESPONDENT

(BY SRI. T. PRAKASH, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.570/2021 PENDING ON THE FILE OF THE CJM RURAL COURT, BANGALORE AGAINST THESE PETITIONERS WHO ARE ARRAYED AS RESPONDENT NO.2 TO 4 IN PETITION FILED U/S 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, BY RESPONDENT VIDE ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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ORDER

The petitioners who are the father-in-law, mother-in-law and brother-in-law of the respondent are before this Court calling in question proceedings initiated by the respondent in Criminal Miscellaneous No.570 of 2021 before the Chief Judicial Magistrate, Bengaluru Rural District invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short).

2. Facts, in brief, germane are as follows:-

One R. Vijay Babu Waghmare and the respondent got married on 25-02-2021. Barely after 7 months of marriage, alleging that the husband and the in-laws or the family members have meted out torture upon the wife, the respondent/wife invoked the jurisdiction of the learned Magistrate under Section 12 of the Act seeking several reliefs, the protection order for residence and maintenance from the hands of the husband. These petitioners are arrayed as respondents 2, 3 and 4 therein alleging that they have also instigated the husband in meting out such torture upon the wife, which would become the ingredients of what would the domestic violence against the wife would mean. No order is passed by the concerned Court. The Petitioners who are respondents 2, 3 and 4 therein have called in question in this petition the very initiation and drawing up of these petitioners into the proceedings before the concerned Court. Therefore, the entire proceedings are sought to be quashed.

3. Heard Sri Amar Correa, learned counsel for the petitioners and Sri T.Prakash, learned counsel appearing for the respondent.

4. The learned counsel appearing for the petitioners would vehemently contend that the petitioners have nothing to do with the life of the husband and the wife. They are without any rhyme and reason driven into these proceedings. Though no order is passed, it is their submission that as to why the petitioners 2 and 3 who are now senior citizens should undergo the misery of appearing before the Court when they have not performed any overt act that would attract violence. It is his submission that the wife has various grievances against the husband. The proceedings should have stopped at that and not dragging every member of the family.

He would submit that the 3rd petitioner is the brother-in-law of the respondent who lives elsewhere and has no connection with the people who are now directed to face proceedings. He would seek quashment of entire proceedings.

5. Per-contra, the learned counsel for the respondent would project a threshold bar. It is his submission that the criminal petition is not maintainable. As appeal should be preferred as obtaining under Section 29 of the Act and that would be a statutory, efficacious and alternative remedy. Invoking jurisdiction of this Court is, on the face of it, erroneous is the submission of the learned counsel. He would submit, without prejudice to his contentions qua maintainability of the petition, that the 3rd petitioner has no role to play, but petitioners 1 and 2 being father-

in-law and mother-in-law, have undoubtedly a role to play in what the husband has behaved with his wife. Therefore, the proceedings must be permitted to continue. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. In the light of the aforesaid submission of the learned counsel for the respondent, I would deem it appropriate to consider the threshold bar of entertainability of the subject petition in the teeth of

existence of alternative statutory remedy of appeal provided under the Act. To answer the said issue, it would become necessary to notice certain provisions of the Act. An application under Section 12 of the Act can be preferred on various circumstances. Therefore, application is preferred by the aggrieved woman alleging domestic violence. Domestic violence is defined under Section 3 of the Act, reading:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

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(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause

(a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

Section 29 which forms the fulcrum of the lis reads as follows:

"29. Appeal.--There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

(Emphasis supplied) Section 29 deals with the remedy of an appeal. It directs that an appeal to the Court of Sessions lie within 30 days from the date on which the order made by the learned Magistrate is served upon the aggrieved person or the respondent, as the case may be. Therefore, Section 29 permits an appeal against any order that is passed, on a bare reading of the provision. Setting aside the entire proceedings is not the power that is vested in the Court of Sessions on an appeal under Section 29 of the Act. It is the inherent power that is conferred upon this Court under Section 482 of the Cr.P.C., to consider these grievances. The learned counsel for the petitioners has placed reliance on record certain judgments, so has the learned counsel for the respondent. I deem it appropriate to notice those judgments that deal with the issue.

8. The sheet anchor of the contention of the learned counsel for the respondent is on the judgment of the Apex Court in the case of KAMATCHI v. LAKSHMI NARAYANAN¹. The said judgment relied on by the learned counsel for the respondent does not consider about entertainability of a petition under Section 482 of the Cr.P.C.. The issue before the Apex Court was whether the period of limitation as obtaining under Sections 468, 469 and 470 of the Cr.P.C. would be applicable to the proceedings under the Act.

The Apex Court answering the said issue holds as follows:

"11. Before we consider the rival submissions, the relevant provisions, namely, Sections 12, 28, 31 and 32 of the Act may be extracted:

(2022) 15 SCC 50 "12. Application to Magistrate.--(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

28. Procedure.--(1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Criminal Procedure Code, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23.

31. Penalty for breach of protection order by respondent.--(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under Section 498-A of the Penal Code, 1860 (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.--(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the offence under sub-section (1) of Section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of Section 31 has been committed by the accused."

12. Similarly, Section 468 of the Code is also set out for facility:

"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;

(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."

13. In terms of Section 468 of the Code, the cognizance of an offence of the categories specified in sub-section (2) can not to be taken after the expiry of the period specified therein.

14. In the following cases, the complaints alleging commission of an offence were filed well in time so that cognizance could have been taken within the prescribed period, but the matters were considered by the Magistrate after the expiry of the prescribed period, and as such the cognizance in each of the cases was taken after the expiry of the period prescribed:.....

....

17. It is, thus, clear that though Section 468 of the Code mandates that "cognizance" ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over.

18. The dictum in Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] has to be understood in light of the situations which were dealt with by the Constitution Bench. If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution.

19. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the Magistrate concerned. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

20. We may now deal with the case on which reliance was placed by the High Court.

21. Inderjit Singh Grewal v. State of Punjab [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was a case where the marriage between the

parties was dissolved by judgment and decree dated 20-3-2008. Thereafter, the wife preferred an application under the provisions of the Act on 4-5-2009 alleging that the decree of divorce was sham and that even after the divorce the parties were living together as husband and wife; and that she was thereafter forced to leave the matrimonial home. It was, in these circumstances, that an application under Section 482 of the Code was filed by the husband seeking quashing of the proceedings under the Act. It was observed that a suit filed by the wife to declare the judgment and decree of divorce as a nullity was still pending consideration before the competent court.

22. The effect of the proceedings culminating in decree for divorce was considered by this Court as under : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC pp. 595-96, paras 16-18) "16. The question does arise as to whether the reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the civil court dated 20-3-2008 subsists. Respondent 2 has prayed as under:

'It is therefore prayed that Respondent 1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that Respondent 1 be directed to pay to her a sum of Rs 15,000 per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the respondents be directed to restore to her all the dowry articles as detailed in Annexures A to C or in the alternative they be directed to pay to her a sum of Rs 22,95,000 as the price of the dowry articles. Affidavit attached.' Thus, the reliefs sought have been threefold : (a) custody of the minor son; (b) the right of residence; and (c) restoration of dowry articles.

17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law." It is trite that "fraud and justice never dwell together"

(*fraus et jus nunquam cohabitant*). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine." An act of fraud on court is always viewed seriously. (Vide Meghmala v. G. Narasimha Reddy [Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383 : (2010) 3 SCC (Civ) 368 : (2010) 3 SCC (Cri) 878] .)

18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth [State of Kerala v. M.K. Kunhikannan Nambiar Manjeri

Manikoth, (1996) 1 SCC 435] and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443]]"

23. The plea based on the issue of limitation was then considered in paras 32 and 33 and it was observed : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC p. 599) "32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Noida Entrepreneurs Assn. v. Noida [Noida Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717] .

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

24. Another case on which reliance was placed during the hearing was Krishna Bhattacharjee v. Sarathi Choudhury [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] . In that case, a decree for judicial separation was passed by a competent court. Thereafter, an application under Section 12 of the Act was preferred by the wife seeking return of stridhan articles and allied reliefs. A plea was taken by the husband that the proceedings under the Act were barred by time. The Magistrate held that as a result of decree for judicial separation, the parties ceased to be in domestic relationship and as such, no relief could be granted. The appeal arising therefrom was dismissed by the lower appellate court and finally revision preferred by the wife was also dismissed by the High Court.

25. In light of these facts, the issue of limitation was considered by this Court as under : (Krishna Bhattacharjee case [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] , SCC pp. 723-24, paras 32-33) "32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who

has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse"

as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

26. Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 :

(2012) 2 SCC (Cri) 614] was decided before the decision of this Court in Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721].

Rather than the issue of limitation, what really weighed with this Court in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was the fact that the domestic violence was alleged after the decree for divorce, when any relationship between the parties had ceased to exist. It is true that the plea based on Section 468 of the Code was noted in para 32 of the said decision but the effect and interplay of Sections 12 and 31 of the Act was not noticed. In Krishna Bhattacharjee [KrishnaBhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] as is evident from para 33 of the said decision, the plea of limitation was rejected as the offence was found to be continuing one and

as such there was no terminal point from which date the limitation could be reckoned. Thus, none of these decisions is material for the purposes of the instant matter.

27. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in P. Pathmanathan [P. Pathmanathan v. V. Monica, 2021 SCC OnLine Mad 8731] as under : (SCC OnLine Mad paras 19-20) "19. In the first instance, it is, therefore, necessary to examine the areas where the DV Act or the DV Rules have specifically set out the procedure thereby excluding the operation of CrPC as contemplated under Section 28(1) of the Act. This takes us to the DV Rules. At the outset, it may be noticed that a "complaint" as contemplated under the DV Act and the DV Rules is not the same as a "complaint" under CrPC. A complaint under Rule 2(b) of the DV Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d)CrPC is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the DV Rules. A complaint under the DV Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the DV Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d)CrPC, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the DV Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d)CrPC, given to a Magistrate and not to an application under Section 12 of the Act."

28. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence."

(Emphasis supplied) The Apex Court holds that the High Court had wrongly equated filing of an application to lodging of a complaint or initiation of proceedings to import Section 468 of the Cr.P.C., and obliterate the proceedings before the concerned Court under the Act. Therefore, the said judgment is distinguishable on its facts without much ado, as in the case at hand, there is nothing that could suggest of any kind of order having been passed by the concerned Court qua under Section 468 Cr.P.C.

9. The issue is whether a criminal petition or a writ petition invoking the jurisdiction under Section 482 of the Cr.P.C., gets controlled by Section 29, statutory appellate remedy, before the Court of Sessions. The judgment of KAMATCHI supra has been pressed into service by every respondent therein contending that the petition under Section 482 of the Cr.P.C., cannot be entertained in the light of existence of alternative remedy. The Apex Court in the case of SHYAMLAL DEVDA v.

PARIMALA2 has held as follows:

"....

8. Section 18 of the Domestic Violence Act relates to protection order. In terms of Section 18 of the Act, intention of the legislature is to provide more protection to woman. Section 20 of the Act empowers the court to order for monetary relief to the "aggrieved party". When acts of domestic violence are alleged, before issuing notice, the court has to be prima facie satisfied that there have been instances of domestic violence.

9. In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant 14 is the husband and Appellants 1 and 2 are the (2020) 3 SCC 14 parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants 3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants 4, 6 and 10 are the wives of Appellants 3, 5 and 9 respectively. Appellants 7 and 8 are the parents of Appellant 1. Appellants 1 to 6 and 14 are residents of Chennai. Appellants 7 to 10 are the residents of the State of Rajasthan and Appellants 11 to 13 are the residents of the State of Gujarat. Admittedly, the matrimonial house of the respondent and Appellant 1 has been at Chennai. Insofar as Appellant 14 husband of the respondent and Appellants 1 and 2 parents-in-law, there are averments of alleged domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of Appellant 14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other Appellants 3 to 13. Since there are no specific allegations against Appellants 3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

10. Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation. Section 27 of the Act reads as under:

"27. Jurisdiction.--(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which--

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act (2) Any order made under this Act shall be enforceable throughout India."

11. A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the "person aggrieved"

permanently or temporarily resides or carries on business or is employed. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1)(a) of the Act, the Metropolitan Magistrate Court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction of the Metropolitan Magistrate Court at Bengaluru.

12. In the result, Crl. Misc. No. 53 of 2015 filed against Appellants 3 to 13 is quashed and this appeal is partly allowed. The learned VIth Additional Metropolitan Magistrate at Bengaluru shall proceed with Crl. Misc. No. 53 of 2015 against Appellants 1, 2 and 14 and dispose of the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter."

(Emphasis supplied) The Apex Court was considering who would be the person aggrieved. The Apex Court sets aside or quashed the proceedings against the appellants therein, as the High Court had rejected the petition under Section 482 of the Cr.P.C., though the issue of maintainability was not expressly considered in that case.

10. A Full Bench of the High Court of Bombay, in the case of NANDKISHOR PRALHAD VYAWAHARE v. MANGALA³ in which the issue was whether the High Court can exercise the power under Section 482 of the Cr.P.C. in respect of proceedings under the Act, answers it after considering the entire spectrum of the Act and the precedents then obtaining as follows:

"....

42. We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Criminal Procedure Code to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under section 482 of Criminal Procedure Code is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Criminal Procedure Code by the Parliament as provided under section 28 of the D.V. Act? In other words - Would the nature of the proceedings decide the fate of section 28 or the intention of the Parliament as expressed in section 28 of the D.V. Act would? To find out an answer, as a first step, we must look into the express language of the provision of section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

....

50. Coming to the second part of section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of 2018 SCC OnLine Bom.923 the provisions of Criminal Procedure Code. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Criminal Procedure Code to all the proceedings under the D.V. Act, as laid down in section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under section 28(2) exists for speedy and effective disposal of an application under section 12 or under sub-section (2) of section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub- section (2) of section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under section 12 or section 23(2) and comes to an end the moment the proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so as to exclude the applicability of the provisions of Criminal Procedure Code, forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, remedy of criminal revision under section 397 or invocation of High Court's inherent power under section 482 of Criminal Procedure Code, we would be doing violence to the language of entire provision of section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51. The purpose of the power given to the Court under section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with section 12 D.V. Act application in a given case and especially the Courts contemplated under section 26 of the D.V. Act before whom similar applications are filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

52. If the concept of limited applicability of the provisions of the Criminal Procedure Code, as propounded by Shri C.A. Joshi, learned Counsel for the respondent is

accepted; in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise its own procedure in a particular case so as to suit the exigencies of that case. We may add here that language used in section 28(2) is significant and needs to be taken into account. The freedom to lay down "own procedure" is confined to only a particular proceeding either under section 12 or section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words "for disposal of an application under section 12, sub-section (2) of section 23" after the words "nothing in sub-section (1) shall prevent the Court from laying down its own procedure".

53. This would mean that generally the provisions of Criminal Procedure Code would be applicable, to all proceedings taken under sections 12 to 23 and also in respect of the offence under section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Criminal Procedure Code to the proceedings referred to in section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the section, which would have its last word. We have already held that section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under section 482 of Criminal Procedure Code, subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and also in respect of the offence under section 31 of the D.V. Act.

54. We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (*supra*), wherein it is observed that a proposition that because the proceedings are of civil nature, the Criminal Procedure Code may not apply, is too general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Criminal Procedure Code to the proceedings under the Act (Paragraph 16). It also held that the remedy under section 482 of Criminal Procedure Code would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under:

"19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under section 29 before the Court of Session or revision under section 397, the Court may decline entertainment of the petition under section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under section 482 of the Code."

55. At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunapareddy (*supra*) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are predominantly of civil nature, the proceedings were to be governed by Criminal Procedure Code as provided under section 28 of the D.V. Act. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under section 18 and monetary relief under section 20 would be governed by the provisions of Criminal Procedure Code in terms of section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding. If these observations apply to a proceeding taken for obtaining reliefs under sections 18 and 20 of the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56. In the case of Sukumar Gandhi (*supra*), the Division Bench of this Court, however, held that because the proceedings under section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to section 482 of Criminal Procedure Code could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under section 482 of Criminal Procedure Code could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite to what has been thought of by it. That apart, making section 482 of Criminal Procedure Code as not applicable may also amount to doing harm to plain and clear language of section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

57. While there is no difference of opinion about what the intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of section 482 to the proceedings under section 12(1) of the D.V. Act and it is achieved by removing its applicability. The issue can be examined from a different angle as well.

58. A plain reading of section 482 of Criminal Procedure Code, which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under section 12 of the D.V. Act. If this power is removed from section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

59. Now, one incidental question would arise as to from what stage the provisions of the Criminal Procedure Code would become applicable and in our view, the answer could be found out from the provisions of sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under section 28 of the D.V. Act, subject to the exceptions provided in the Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of section 28, the provisions of the Criminal Procedure Code shall govern the proceedings under sections 12 to 23 and also those relating to an offence under section 31 of the D.V. Act on their commencement."

(Emphasis supplied) The Full Bench considers at what point in time or at what stage the Cr.P.C. would become applicable and holds that it is only where an order is passed.

11. In a later judgment, noticing the judgment of the Full Bench, the High Court of Bombay in DHANANJAY MOHAN ZOMBADE v. PRACHI⁴ has held as follows:

"....

13. Full Bench of this Court in the case of Nandkishor Pralhad Vyawahare v. Mangala w/o Pratap Bansar, (2018) 3 Mah LJ 913, has framed issue for consideration i.e. "whether or not High Court can exercise its powers under Section 482 of the Criminal Procedure Code, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005?" While answering the said question, it is clearly held that the provision of Section 482 of the Code of Criminal Procedure has application to DV Act. Considering the law on the point of binding precedents, the Full Bench judgment of this Court binds this Court. The judgment of Full Bench of Madras High Court in the case of Arun Daniel (supra) has persuasive value but it

does not bind this Court. For the reasons recorded hereinabove, with utmost respect to the Full Bench of Madras High Court, this Court does not concur with the said judgment.

14. As far as judgments cited by learned counsel for the respondent are concerned, in case of Kunapareddy v. Kunapareddy Swarna Kumari, (2016) 11 SCC 774, the Hon'ble Apex Court was dealing with the issue as to whether amendment could be allowed in the proceedings under DV Act. In case of State of West Bengal v. Sujit Kumar Rana, (2004) 4 SCC 129, the issue before the Hon'ble Apex Court was as to whether the provisions of Section 482 of the Code of Criminal Procedure would apply to the confiscation proceeding under Section 59-G of Forest Act. In this case, it was held that Section 59-G of Forest Act confers specific power in officer appointed under Section 59(C) and District Judge to whom the appeal can be preferred under Section 59-C and 59-D. In 2023 SCC OnLine Bom. 1607 view of such specific power created by the Statute, it was held that application under Section 482 of the Code of Criminal Procedure is not tenable. In the instant case, no specific power is vested in other authority by DV Act in order to apply the said judgment to the present case. In case of Oliver Menezes v. Serita Therese Mathias, 2021 DGLS (Kar.) 304, the Karnataka High Court has no doubt held that Section 482 of the Code of Criminal Procedure is not applicable to the DV Act. However, this Court respectfully disagrees with the said view. Delhi High Court in the case of Sirisha Dinavahi Bansal v. Rajiv Bansal, 2020 SCC OnLine Del 764, was dealing with the situation when remedy of appeal under Section 29 of the DV Act was available and in such circumstances, it is held that the petition under Section 482 of the Code of Criminal Procedure is not maintainable. There is no such efficacious remedy available under DV Act for quashment of proceeding which amounts to abuse of process of Court and hence invocation of Section 482 of the Code of Criminal Procedure is fully justified."

(Emphasis supplied) Exercising its jurisdiction under Section 482 of the Cr.P.C., the complaint was quashed by the learned Judge of the High Court of Bombay. While doing so, the learned Judge considers the Full Bench judgment and all other judgments obtaining on the issue. The learned Judge holds that there is no efficacious remedy available under the Act for quashment of proceeding on account of it becoming an abuse of the process of law. I am in respectful agreement with the order passed in DHANANJAY MOHAN ZOMBADE's case supra.

12. The High Court of Andhra Pradesh, following the judgment of the Apex Court in SHYAMLAL DEVDA'S case supra, in the case of MORA v. STATE OF AP5 holds that the judgment in SHYAMLAL DEVADA'S case did not specifically decide maintainability, but there is no bar of exercise of power of a Court under Section 482 of the Cr.P.C. in a proceeding under the Act. The High Court has held as follows:

"9. On the other hand, in case of Shyamlal Devda v. Parimala, (2020) 3 SCC 14, Hon'ble Apex Court has set aside the order passed by the High Court wherein the proceedings under DV Act were not quashed under Section 482 of the Code of

Criminal Procedure. Though this judgment also does not specifically decide applicability of Section 482 of the Code of Criminal Procedure to DV Act, however, the said judgment more than sufficiently indicates that there is no bar to exercise powers under Section 482 of the Code of Criminal Procedure to the proceeding under DV Act."

(Emphasis supplied)

13. A coordinate Bench of this Court has in MRS.

ARADHANA SHARDA v. MRS. GEETHA RASTOGI⁶ after considering the judgment of the Apex Court in KAMATCHI supra has held as follows:

2024 SCC OnLine AP 1769 Criminal Petition No.7483 of 2020 & connected cases decided on 23-09-2023 ".....

11. Now coming to the pivotal question whether this court can exercise jurisdiction under Section 482 of Code of Criminal Procedure, to set at naught the proceedings initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, it is apposite to refer the judgment of Hon'ble Apex Court in the case of State Of Haryana referred supra, where it was held that the Court exercising jurisdiction is not shorn of the power under Articles 226 and 227 of the Constitution of India and whenever Court is confronted with a situation where the provision of any penal law is abused, it would unhesitatingly exercise jurisdiction to set at naught such proceeding.

12. In the case on hand, though it is contended that the Hon'ble Apex Court in the case of Kamatchi supra held that under Section 482 of Code of Criminal Procedure, the High Court cannot exercise jurisdiction to quash the proceedings under Section 12 of Protection of Women from Domestic Violence Act 2005, in the instant case, the proceedings before the Trial Court has moved on from the stage of issuing notice. The consequence of non-compliance of an order under Sections 21 and 22 is provided in Section 31 of the Act of 2005, which reads as follows :

"31. Penalty for breach of protection order by respondent.--

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

13. Therefore, it cannot be held that the provisions under the PWDV Act 2005 are civil in nature. Therefore, when the Court is confronted with a false case or a case which does not constitute domestic violence as defined under the Protection of Women from Domestic Violence act 2005, the same cannot continue, as that would result in nuisance and harassment of the petitioner. Therefore, the proceedings against the petitioner cannot continue."

(Emphasis supplied)

14. Yet another coordinate Bench of this Court, answering an identical contention in MR. SHRIKANTH RAVINDRA v. SMT.

PADARATHY S.SOWMYA⁷ has held as follows:

"....

11. The proceedings under the Act, 2005 are the proceedings which are to governed by the Cr.P.C. as held by the Hon'ble Supreme Court in the case of Satish Chander supra, the submission of the learned counsel for the respondent that the relief sought under Sections 12 and 19 are predominantly civil in nature and as such the writ petition is not maintainable under Section 482 of Cr.P.C. is not acceptable. Even otherwise, the present petition is filed under Article 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C. Hence, the present petition is maintainable even accepting that W.P.No.5915 of 2017 decided on 29-06-2022 the proceedings under D.V. Act, 2005 are predominantly civil in nature.

12. The petitioner cannot be relegated to file an application for deleting his name by invoking Order I Rule 10(2) of the Code of Civil Procedure, 1908, since the provisions of the C.P.C. are not applicable to the proceedings under the D.V. Act, 2005. The present petition is maintainable to secure the ends of justice when prima facie it is established that the impugned proceedings are initiated with an ulterior motive for wreaking vengeance against the petitioner and with revengeful intent.

13. In view of the preceding analysis, continuation of the impugned proceedings against the petitioner will be an abuse of process of law."

(Emphasis supplied) These are the Authorities that the learned counsel for the petitioners would place reliance upon to buttress his submission that the petition under Section 482 of the Cr.P.C., would be maintainable.

15. The other line of judgments on which the learned counsel for the respondent has placed reliance upon are (i) KAMATCHI supra and (ii) OLIVER MENEZES v. SERITA THERESE MATHIAS⁸. The coordinate Bench in the judgment of OLIVER MENEZES holds that the orders passed under Sections 18 to 22 do Criminal Petition No.356 of 2019 decided on 20-05-2021 not attach any criminal liability. They are civil in nature. Therefore, a petition under Section 482 of the Cr.P.C., would not be maintainable. So goes the judgment of the learned single Judge of the High Court of Himachal Pradesh in the case of SANJEEV KUMAR v. SUSHMA DEVI⁹ which holds, a petition under Section 482 of the Cr.P.C. would not be maintainable challenging the proceedings under Section 12 of the Act and recourse has to be taken to Article 227 of the Constitution of India. I respectfully disagree with the view taken by the learned single Judge of the High Court of Himachal Pradesh, in the light of the judgments of the Apex Court and that of the coordinate Benches of this Court.

16. On a coalesce of all the judgments quoted supra and their consideration, the following would emerge. A petition under Section 482 of the Cr.P.C., be it invoking the writ jurisdiction or inherent jurisdiction under the Cr.P.C., would be maintainable and entertainable, if the entire proceedings are sought to be quashed, as the Court of Sessions is no where conferred with such power under the Act to obliterate entire proceedings, on account of it Criminal Revision Petition No.132 of 2021 decided on 01-06-2023 being abuse of the process of law. If any particular order is passed on any application filed by the aggrieved person under Sections 18, 19, 20 or 22 of the Act, those specific orders are to be agitated by the said aggrieved person before the Court of Sessions invoking Section 29 of the Act. For interlocutory orders passed by the concerned Court under the aforesaid provisions of the Act, a petition under Section 482 of the Cr.P.C., would not become entertainable. Therefore, the contention of the learned counsel for the respondent that the petition is not maintainable or entertainable is to be rejected in the light of the preceding analysis and is accordingly rejected. What is called in question, in the case at hand, is not any specific order passed by the concerned Court under Sections 18, 19, 20 or 22 of the Act. It is the entire proceeding, on the ground that it is an abuse of the process of law. Therefore, the subject petition becomes entertainable and the petition is thus entertained. Therefore, I deem it appropriate to delve into the facts of the case.

17. The complaint is registered venting out grievances against the husband. What is found in the complaint against these petitioners is instigation on the demand of dowry. In the lengthy application so filed, it is the grievance/allegation that torture and abuses are meted out by the husband against the wife. Inferences of the allegations against these petitioners are found at paragraph 10 of the application. It reads as follows:

"...

10. It is pertinent hereto state that the respondent is a puppet at the hands of his parents Sri.A.Ramesh Babu Waghmare, Smt.R.Sasikala Bai and his elder brother Sri. C.R.Chandrashekhar, who is working at Baxter International, Bangalore, who are poisoning the mind of the respondent to demand dowry and to cause ill treatment, harassment and to inflict cruelty on the petitioner."

It is alleged that the husband is a puppet in the hands of his father, mother and his elder brother who are poisoning the mind of the husband to cause ill-treatment. This in no manner would bring about any ingredients of what would mean 'domestic violence' as found in Section 3 of the Act. Section 3 of the Act reads as follows:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause

(a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

Section 3 has several forms and hues of domestic violence. None of these are attributable to these petitioners. It has become a norm in today's proceedings be it invoking Section 498A of the IPC or Section 12 of the Act to rope in other members of the family, while the entire grievance would be against the husband. Such proceedings under Section 482 of the Cr.P.C. are held to be an abuse of the process of law, by the Apex Court in plethora of cases.

The Apex Court in the case of KAHKASHAN KAUSAR v. STATE OF BIHAR¹⁰ has held as follows:

"Issue involved

10. Having perused the relevant facts and contentions made by the appellants and respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the appellant in-laws are in the nature of general omnibus allegations and therefore liable to be quashed?

(2022)6 SCC 599

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-

AIPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

12. This Court in its judgment in *Rajesh Sharma v. State of U.P.* [Rajesh Sharma v. State of U.P., (2018) 10 SCC 472: (2019) 1 SCC (Cri) 301], has observed :

(SCC pp. 478-79, para 14) "14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression "cruelty" in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand.

[Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

13. Previously, in the landmark judgment of this Court in *Arness Kumar v. State of Bihar* [Arness Kumar v. State of Bihar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449], it was also observed : (SCC p. 276, para 4) "4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

14. Further in *Preeti Gupta v. State of Jharkhand* [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473], it has also been observed :

(SCC pp. 676-77, paras 32-36) "32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem.

They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

15. In *Geeta Mehrotra v. State of U.P.* [Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741; (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120] it was observed : (SCC p. 749, para 21) "21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad* [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a

matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12) '12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the 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 the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts.' The view taken by the Judges in this matter was that the courts would not encourage such disputes."

16. Recently, in K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605] , it was also observed that : (SCC p. 454, para 6) "6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

19. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR Respondent 1 i.e. the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the learned Principal Judge, Purnea, to not harass the respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 1-4-2019, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11-12-2017.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged."

(Emphasis supplied) In the light of the proceedings being an abuse of the process of law, I deem it appropriate to exercise the jurisdiction under Section 482 of the Cr.P.C. and obliterate the proceedings.

SUMMARY OF THE FINDINGS:

(i) A petition under Section 482 of the Cr.P.C. calling in question the entire proceedings before the concerned Court initiated under the Protection of Women from Domestic Violence Act, 2005 would be maintainable, only if the proceedings are challenged on the ground of abuse of the process of the law, as the Court of Session is not empowered to obliterate the proceedings holding it to be an abuse of the process of the law.

(ii) Any specific order passed by the concerned Court answering applications filed under Sections 18, 19, 20 or 22 of the Act or any other interlocutory order would not be entertainable before this Court in its jurisdiction under Section 482 of the Cr.P.C. The aggrieved, by any order, has to prefer an appeal under Section 29 of the Act, as it is an alternative and statutory remedy available.

(iii) Finding the entire process initiated by the respondent against the present petitioners, the father-in-law and mother-in-law, to be an abuse of the process of the law, those proceedings are to be obliterated.

18. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) The proceedings in Criminal Miscellaneous No.570 of 2021 pending before the Chief Judicial Magistrate, Bangalore Rural District stand quashed qua the petitioners.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against the other accused.

Sd/-

JUDGE bkp CT:SS

Sri B V Krishnamurthy vs Smt V D Shashikala on 19 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

-1-

NC: 2024:KHC:21831
CRL.P No. 8910 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 8910 OF 2018 (482)

BETWEEN:

1. SRI B V KRISHNAMURTHY
S/O DORAISWAMY .B
NO.120, 8TH MAIN ROAD, 19TH CROSS,
LHBS LAYOUT, VIJAYANAGAR,
BANGALORE-560 040.

...PETITIONER

(BY SRI. SATISH T S., ADVOCATE)

AND:

1. SMT V D SHASHIKALA
W/O LATE DEVARAJU V.K.
AGED ABOUT 45 YEARS,

2. V.D.GAGAN RAJ
S/O LATE DEVARAJU V.K.
AGED ABOUT 14 YEARS,

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA

3. V.D.CHETRAN RAJ, S/O LATE DEVARAJU V.K.
AGED ABOUT10 YEARS,

R-2 & 3 ARE MINORS,
REPRESENTED BY THEIR MOTHER
AND NATURAL GUARDIAN,
V.D.SHASHIKALA-FIRST RESPONDENT

ALL R/AT 1/4, SKYLINE APARTMENT ROAD,
CHANDRA LAYOUT, BANGALORE-560 040.

...RESPONDENTS

(BY SRI. M.R.SWAROOP., ADVOCATE
(R-2 & R-3 ARE MINORS & REPRESENTED BY R-1)

-2-

NC: 2024:KHC:21831
CRL.P No. 8910 of 2018

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE IMPUGNED COMPLAINT IN CRL.MISC.NO.12/2018 PENDING BEFORE THE V A.C.M.M., (TRAFFIC COURT-5) BANGALORE AT ANNEXURE-A AND CONSEQUENTLY ALSO QUASHING THE COGNIZANCE OF THE COMPLAINT AND ISSUANCE OF SUMMONS AT ANNEXURE-B.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is admittedly the father-in-law of respondent No.1 and the grandfather of respondent Nos.2 and 3.

2. A reading of the complaint indicates that the daughter-in-law and the grandchildren had initiated proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 and it indicates that the first respondent had married the son of the petitioner, but unfortunately, the son passed away in the year 2015 due to certain health issues. It is also forthcoming from the complaint that there were allegations that the husband was not looking after his family and he was an alcoholic.

NC: 2024:KHC:21831 It is also stated that the respondents were advised to leave the house for three months after the death of the husband, and heeding to said advise, they had left the matrimonial house and were staying with their parents.

3. It is therefore sought to be contended that the father-in-law did not allow the daughter-in-law and the grandchildren to reside in the house and was abusing them. It is also stated that he was getting rent of over Rs.80,000/- per month and also owned properties for which he was getting Rs.40,000/-, apart from getting pension, and despite that, he was not maintaining his daughter-in-law and grandchildren, as a consequence of which they were forced to initiate proceedings.

4. In a case of this nature where it is admitted that the husband had passed away and the

daughter-in-law and the grandchildren had started residing separately, the initiation of proceedings for maintenance against the father-in-law and for payment of maintenance and alimony would be untenable. The petitioner is a person who is NC: 2024:KHC:21831 aged about 86 years and it would be untenable for the daughter-in-law to initiate proceedings against him claiming maintenance.

5. I am, therefore, of the view that there is no justification in continuing the proceedings as against the petitioner and the proceedings is, therefore, quashed as against the petitioner. This petition is, accordingly, allowed.

6. In view of disposal of main petition, pending I.A., if any, does not survive for consideration and is accordingly disposed of.

Sd/-

JUDGE HNM

Sri D H Basavaraju vs Smt Kalpana H on 5 June, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:19317
RFA No. 1003 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 1003 OF 2022 (DEC/PAR)

BETWEEN:

SRI. D.H. BASAVARAJU
S/O D.M HOLEYAPPA
AGED ABOUT 47 YEARS,
NOW R/AT DODDAGHATTA VILLAGE
NAGAVEDI POST
KANAKATTE HOBLI
ARASIKERE TALUK
HASSAN DISTRICT
PIN-573 103.

...APPELLANT

(BY SRI. MADHUSUDHAN M.N, ADVOCATE)

AND:

Digitally signed by
BASAVARAJU PAVITHRA
Location: HIGH COURT
OF KARNATAKA

1. SMT. KALPANA.H
W/O D.H.BASAVARAJU
D/O HANUMAPPA
AGED ABOUT 39 YEARS,
2. KUM. SHREYA
D/O D.H. BASAVARAJU
AGED ABOUT 12 YEARS,

MINOR REP. BY HER
NATURAL GUARDIAN
MOTHER RESPONDENT NO.1
BOTH RESPONDENT NOS.1 & 2 ARE
RESIDING AT DOOR NO.1722/38,
2ND CROSS, SIDDAVERAPPA EXTENSION
-2-

NC: 2024:KHC:19317
RFA No. 1003 of 2022

DAVANAGERE, PIN-577 001.

3. SRI. D.N HOLEYAPPA
S/O LATE MARIYAPPA
AGED ABOUT 73 YEARS,
RESIDING AT DODDAGHATTA VILLAGE
NAGAVEDI POST, KANNAKATTE HOBLI
ARASIKERE TALUK-573 103.
4. SMT. CHANDRAKALA
W/O D.M HOLEYAPPA
AGED ABOUT 70 YEARS,
C/O SUSHEELAMMA
KARIGOWDARA COLONY
2ND CROSS, B.M ROAD
HASSAN, PIN-573 201
5. SRI. D.H MOHAN KUMAR
S/O D.M HOLEYAPPA
AGED ABOUT 50 YEARS,
RESIDING AT DODDAGHATTA VILLAGE
NAGAVEDI POST, KANNAKATTE HOBLI
ARASIKERE TALUK
PIN-573 103.
6. SMT. D.H BHAGYAMMA
D/O D.M HOLEYAPPA
W/O KUMAR
AGED ABOUT 48 YEARS,
RESIDING AT TAMMADIHALLI VILLAGE
MASKAL POST
TUMAKUR DISTRICT
PIN-572 101.

...RESPONDENTS

(BY SRI. A.V.AMARNATHAN, ADVOCATE FOR R1 & R2;
SRI. B.HANALINGE GOWDA, ADVOCATE FOR R3-R6)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED

05.02.2022 PASSED IN OS No.21/2019 ON THE FILE OF THE
SENIOR CIVIL JUDGE AND JMFC, ARSIKERE, DECREEEING THE

-3-

NC: 2024:KHC:19317
RFA No. 1003 of 2022

SUIT FOR PARTITION, SEPARATE POSSESSION AND DECLARATION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Though the appeal is listed for admission, with the consent of the learned counsel for the parties, the appeal is taken up for final disposal.

2. This appeal is filed by the appellant-Defendant No.5 under Section 96 of the Code of Civil Procedure, 1908, calling in question the judgment and decree dated 05.02.2022 passed in O.S.No.21/2019 by the Senior Civil Judge and JMFC at Arsikere.

3. For the purpose of convenience, the ranking of the parties is referred to as per their status before the trial Court.

4. Brief facts of the case are that respondent No.1/ plaintiff No.1 is the wife of the appellant/defendant No.5 and respondent No.2/plaintiff No.2 is the daughter of plaintiff No.1 and defendant No.5. Since there was difference of opinion in the family, the first plaintiff was constrained to desert 5th defendant and started to live separately along with 2nd plaintiff- minor daughter. Therefore, the plaintiffs have filed a NC: 2024:KHC:19317 suit before the trial Court seeking for partition and separate possession in respect of suit schedule properties and for maintenance. Accordingly, the trial Court decreed the suit to the effect that 2nd plaintiff is entitled to ½ (half) share in the share of defendant No.5 in the suit schedule properties and also granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by the 5th defendant.

5. The relationship between the plaintiffs and 5th defendant is admitted. 5th defendant has denied the allegations made by the 1st plaintiff in the suit. Further, it is contended that there was earlier registered partition deed dated 03.08.2018 as per Ex.P31. Hence, the plaintiffs cannot seek partition once again.

6. On the basis of the pleadings of the parties, the trial Court has framed the following:

"ISSUES

1. Whether the plaintiffs prove that they constitute the members of the joint Hindu family and that the suit schedule properties are the ancestral and joint family properties available for partition?
2. Whether the partition effected on 03.08.2018, 28.09.2018, 24.01.2014, 30.12.2013 and 19.05.2015 defendants 1 to 5 is made in order to cheat the plaintiffs behind their back NC: 2024:KHC:19317 and hence, liable to be set-aside as they are not binding upon plaintiffs' share?
3. Whether plaintiffs are entitled for the relief of partition and separate possession?
4. Whether plaintiffs are entitled for maintenance of Rs.20,000/- per month from the 5 defendant?
5. Whether plaintiffs are entitled for permanent injunction?
6. What order or decree?"
7. On behalf of the plaintiffs, 1st plaintiff got examined as PW.1 and got marked 46 documents as Ex.P1 to Ex.P46. On the other hand, on behalf of the defendants, 5th defendant got examined as DW.1 and got marked a document as Ex.D1.
8. The trial Court after considering the material evidence on record both oral and documentary, has decreed the suit of the plaintiffs and granted 1/2 (half) share to 2nd plaintiff in the share of 5th defendant in the suit schedule properties. Further, it is declared that the partitions which took place earlier do not bind on the share of 2nd plaintiff. Further, the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by 5th defendant. Being aggrieved by the same, 5th defendant alone has preferred the instant appeal.

NC: 2024:KHC:19317

9. Learned counsel for the appellant/defendant No.5 submitted that the suit for partition is not maintainable since three partitions were held earlier in the family. Hence, there is no joint family status to claim the partition. Hence, the suit is not maintainable. It is further submitted that the 5th defendant has taken voluntary retirement which is admitted by the plaintiffs. Therefore, 5th defendant does not have any source of income. The trial Court without considering the same, has granted maintenance amount of Rs.20,000/- per month to the plaintiffs, which is not correct. Therefore, he prays to set aside the judgment and decree by allowing the appeal.
10. On the other hand, learned counsel for the respondents/plaintiffs submitted that the earlier partitions which had taken place were just to defeat the legitimate right of 2nd plaintiff-minor daughter and those partitions were inequitable partitions. Hence, they are not binding on the plaintiffs.

11. Further, it is submitted that the plaintiffs have filed the petitions in C.Misc.No.11/2019 under Section 125 of the Code of Criminal Procedure, 1973 for maintenance and Crl.Misc.No.18/2019 under Section 12 of the Protection of NC: 2024:KHC:19317 Women from Domestic Violence Act, 2005 for protection and compensation. Both the petitions came to be dismissed on the reason that the maintenance amount of Rs.20,000/- per month was granted by the trial Court to the plaintiffs. Therefore, they would not get double claim of maintenance by 5th defendant. Hence, the same was considered by the trial Court and thus, granted the maintenance amount, which does not call for interference. Therefore, he prays for the dismissal of the appeal.

12. Upon considering the rival contentions and hearing the arguments of the learned counsel for the parties, the points that would arise for consideration are as follows:

1. Whether the plaintiffs prove that they constitute the members of the joint Hindu family and the suit schedule properties are the ancestral and joint family properties available for partition?
2. Whether the defendant proves that there were partition earlier in the family and hence, the suit filed by the plaintiffs is not maintainable?
3. Whether the judgment and decree passed by the trial Court requires any interference by this Court?

NC: 2024:KHC:19317

4. What order or decree?

13. All the above points are interlinked with each other. Therefore, in order to avoid repetition of discussion on the above questions of law and facts, they are taken up together for common consideration.

14. In the present case, upon perusing the pleadings and evidence on record, the relationship between the plaintiffs and 5th defendant is an admitted fact and there is no dispute in this regard. 1st plaintiff is the wife and 2nd plaintiff is the minor daughter of 5th defendant and amongst defendant Nos.1 to 5, the relationship is also not disputed. The suit schedule properties are ancestral properties, which are also not in dispute.

15. Upon a solemnized marriage between 1st plaintiff and 5th defendant, they lived happily for some time. Out of their wedlock, 2nd plaintiff was born. Later on, 5th defendant started ill-treating the 1st plaintiff, both physically and mentally. Therefore, 1st plaintiff was constrained to desert 5th defendant along with 2nd plaintiff and started to reside separately. Since NC: 2024:KHC:19317 the plaintiffs do not have any source of income and 2nd plaintiff is the minor daughter of 5th defendant, the plaintiffs have filed the suit for partition and maintenance.

16. It is the case of the defendants that there were partitions effected on 03.08.2018, 28.09.2018, 24.01.2014, 30.12.2013 and 19.05.2015, but to prove these partitions which were effected in the family of the defendants, the defendants have not filed any documentary evidence. Though 5th defendant got examined as DW.1, he has only produced a certified copy of the order in Crl.Misc.No.18/2019 which was filed by the plaintiffs for protection and compensation. Therefore, contentions that there were earlier partitions in the family, which are not proved. Furthermore, the registered partition deed dated 03.08.2018 as per Ex.P31 was created only for the purpose of defeating the rights of claim of the plaintiffs and the said partition was an inequitable partition. As per the said partition at Ex.P31, 1 acre of land has been given to 5th defendant as his share out of 13 acres 3 guntas of land. The rest of 12 acres 3 guntas of land was shared between defendant Nos.1 to 4. The arrangement is made to effect that out of total extent of 13 acres 3 guntas of land, 1st defendant

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NC: 2024:KHC:19317 has been given 2 acres and 25 guntas of land, 2nd defendant has been given 16 guntas of land, 3rd defendant has been given 4 acres and 26 guntas of land, 4th defendant has been given 2 acres and 20 guntas of land, but 5th defendant has been given only 1 acre of land. While considering these partition arrangements made by the defendants as per Ex.P31, this is found to be inequitable partitions and were created with an intention to defeat the legitimate claim of 2nd plaintiff-minor daughter of 5th defendant. Therefore, the trial Court is correct in disbelieving the partition deed as per Ex.P31. Therefore, the registered partition dated 03.08.2018 as per Ex.P31 is not binding on the share of the 2nd plaintiff. It is proved that the said partition deed as per Ex.P31 was created to defeat the legitimate rights of 2nd plaintiff and also the claim for the maintenance amount of the plaintiffs. Therefore, in this regard, the finding of the trial Court is correct, which does not call for interference.

17. DW.1 has admitted all these facts in his cross examination, defendant Nos.1 to 4 were given garden lands, whereas 5th defendant was given dry land to an extent of 1 acre. This manifestly proves that the partition deed as per

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NC: 2024:KHC:19317 Ex.P31 was a well-planned arrangement just to defeat the rights and claims of the plaintiffs.

18. Upon perusing the materials on record, it is noticed that 5th defendant, who was working as a Surveyor in the office of the Assistant Director, Survey Department, Hassan, has taken voluntary retirement from the service. Therefore, the plaintiffs have filed Crl.Mis.No.18/2019 and Crl.Misc.No.11/2019 for maintenance. Both petitions came to be dismissed on the reason that the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs. Therefore, when the relationship between the plaintiffs and 5th defendant is admitted and the plaintiffs are residing separately, 5th defendant is liable to maintain the plaintiffs. During the course of the cross-examination of 5th defendant, admitted that he does not know the education expenses of 2nd

plaintiff, which are paid by 1st plaintiff. 5th defendant, being the father of 2nd plaintiff, has not done anything for the welfare of 2nd plaintiff- minor daughter. Therefore, 5th defendant, who is the Government Servant, has claimed that he has taken a voluntary retirement, which cannot absolve him of his responsibilities for maintaining his wife and child. Therefore,

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NC: 2024:KHC:19317 considering the expenses incurred for living peaceful or decent life for the plaintiffs and 2nd plaintiff is pursuing school education, the plaintiffs need maintenance amount and accordingly, the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by 5th defendant, which is justifiable and correct and the same does not call for interference by this Court.

19. Merely because, the plaintiffs and defendant No.5 have not submitted affidavit assets and liabilities, the same cannot be a reason to deny/refuse grant of maintenance to the plaintiffs. The filing of an affidavit in this regard only enables the Court to come to a conclusion to determine the quantity of maintenance amount. Even though, without the affidavit, the Court can determine as to what will be the amount required for maintaining the wife and child. On this ground, it cannot be said that the trial Court erred in granting the maintenance in this case. Therefore, I do not find any ground to interfere with the finding and observation made by the trial Court and thus, the appeal is found to be devoid of merits and is liable to be dismissed at the stage of admission itself and it is also not a fit case for admission.

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NC: 2024:KHC:19317

20. Accordingly, I proceed to pass the following:

ORDER i. The appeal is dismissed.

ii. The judgment and decree dated 05.02.2022 passed by the Trial Court in O.S.No.21/2019 is hereby confirmed.

iii. No order as to costs.

Sd/-
JUDGE

KTY

Sri. Deepak Shenoy @ Arun vs Smt. Varsha Baliga @ Aparna Shenoy on 22 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:16136
CRL.P No. 1650 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2024

BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 1650 OF 2024
BETWEEN:

SRI. DEEPAK SHENOY @ ARUN,
S/O LATE U. NARASIMHA SHENOY,
AGED ABOUT 35 YEARS,
R/AT FLAT NO.103,
DIA RESIDENCY,
BHOJA RAO LANE,
PRAGATHI SERVICE STATION,
BHAGAVATHI NAGAR,
2ND CROSS, KODIYALABAIL,
MANGALURU,
D.K. DISTRICT-575 003.

...PETITIONER

(BY SRI. K. RAVISHANKAR, ADVOCATE)

AND:

Digitally
signed by SMT. VARSHA BALIGA @ APARNA SHENOY,
PAVITHRA N W/O DEEPAK SHENOY @ ARUN,
Location:
High Court AGED ABOUT 31 YEARS,
of Karnataka R/AT NANDAGOKULA,
 SIQUEIRA LANE,
 URWA,
 MANGALURU,
 D.K.DISTRICT-575 006.

...RESPONDENT

(BY SRI. RAGHAVENDRA SHENOY M., ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.P.C PRAYING TO QUASH
THE IMPUGNED ORDER DATED 19.01.2024 PASSED IN
CRL.A.NO.12/2024, PENDING ON THE FILE OF III ADDITIONAL

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NC: 2024:KHC:16136
CRL.P No. 1650 of 2024

DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU AND
ALLOW I.A.NO.1.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court assailing the order dated 19.01.2024 passed by the Court of III Additional District and Sessions Judge, Dakshina Kannada, Mangalore rejecting his application filed under Section 389(1) of Cr.P.C., seeking stay of the interim order passed by the III JMFC Court, Mangalore dated 01.04.2022 in Crl.Misc.No.88/2019.

2. Heard learned counsel for both the parties.

3. Respondent herein had filed proceedings under the provisions of Protection of Women from Domestic Violence Act before the III JMFC Court, Mangalore in Crl.Misc.No.88/2019. In the said proceedings, the Trial Court passed an ex parte order of interim maintenance directing the petitioner herein to pay a sum of Rs.10,000/- as maintenance per month to the respondent. Application NC: 2024:KHC:16136 filed by the petitioner to vacate the said order was dismissed. Assailing the same, the petitioner had filed Crl.A.No.12/2024 before the Court of III Addl. District Judge, D.K., Mangalore. In the said appeal, he had filed applications to condone the delay caused in filing the appeal and also to stay the order dated 01.04.2022 passed by the Trial Court in Crl.Misc.No.88/2019. The appellate Court while issuing notice to the respondent has rejected the application filed by the petitioner under Section 389(1) of Cr.P.C. Being aggrieved by the same, the petitioner is before this Court.

4. Learned counsel for the petitioner submits that the Appellant Court could not have rejected the application without even issuing notice to the respondent. He submits that rejection of the application filed under Section 389 of Cr.P.C., has caused serious hardship to the petitioner.

5. Learned counsel appearing for the respondent submits that there is an inordinate delay in filing the NC: 2024:KHC:16136 criminal appeal before the Appellate Court. Without condoning the said delay, the application under Section 389(1) of Cr.P.C., could not have been entertained. Therefore, the Appellate Court was justified in dismissing the application filed under Section 389(1) of CrPC.

6. It is not in dispute that the Trial Court had initially passed an ex parte order directing the petitioner herein to pay a sum of Rs.10,000/- per month as monthly maintenance to the respondent. Petitioner herein has filed an application seeking vacation of the said ex parte interim order, contending that the respondent is gainfully employed and she is drawing monthly salary. The Trial Court had rejected the said application and being aggrieved by the same Crl.A.No.12/2024 was filed by the petitioner before the Appellate Court. It is also not in dispute that there is an ordinary delay in preferring the said appeal and therefore, application has been filed by the petitioner to condone the delay caused in filing the criminal appeal and also to stay the order dated NC: 2024:KHC:16136 01.04.2022 passed by the Court of III JMFC Court, Mangalore, D.K., in Crl.Misc.No.88/2019.

7. In my considered view, the Appellate Court has erred in dismissing the application filed under Section 389(1) of Cr.P.C. The Appellant Court ought to have issued notice on the said application to the respondent and ought not to have dismissed the same at the stage of issuing notice to the respondent. On this short, the order impugned is liable to set aside and accordingly, the following, ORDER i. The Criminal petition is 'allowed'. ii. The impugned order dated 19.01.2024 passed by the Court of III Additional District and Sessions Judge, D.K., Mangalore rejecting the interim application filed by the petitioner under Section 389(1) of CrPC is set aside.

NC: 2024:KHC:16136 iii. Since the respondent has already entered appearance before the Appellate Court in Crl.A.No.12/2024, the Appellate Court is directed to consider I.A.Nos.1 and 2 filed by the petitioner/appellant and pass appropriate orders on the merits of the application after hearing the respondent and after giving an opportunity to the respondent to file her objections to the said applications. Till then no coercive steps shall be taken against petitioner.

SD/-

JUDGE BN

Sri. Devendrappa S/O Shivappa Gudi vs Smt. Saroja W/O Devendrappa Gudi on 23 April, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC-D:6707
CRL.P No. 101074 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 23RD DAY OF APRIL, 2024
BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL PETITION NO. 101074 OF 2024

BETWEEN:

1. SRI. DEVENDRAPPA S/O SHIVAPPA GUDI,
AGED ABOUT 49 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
2. SRI. SHIVAPPA S/O BASAVANNEPPA GUDI,
AGED ABOUT 74 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
3. SMT. AKKAMMA W/O SHIVAPPA GUDI,
AGED BOUT 72 YEARS, OCC. HOUSEHOLD WORK,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
4. SMT. BASAMMA W/O GANGAPPA KAMATAD,
AGED ABOUT 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
5. SRI. SANKAPPA S/O SHIVAPPA GUDI,
AGED ABOUT 44 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.

... PETITIONERS

(BY SRI. P.G. CHIKKANARAGUND, ADVOCATE)

Digitally signed

by

VIJAYALAKSHMI

M KANKUPPI AND :

Location: HIGH

COURT OF

KARNATAKA

DHARWAD

BENCH

SMT. SAROJA W/O DEVENDRAPPA GUDI,

AGED ABOUT 39 YEARS, OCC. NIL AT PRESENT,

R/O. MAREWAD, TQ. & DIST. DHARWAD-580201,
NOW R/AT. HARLAPUR, TQ. KUNDGOL,
DIST. DHARWAD-581107.

... RESPONDENT
(RESPONDENT SERVED)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C., SEEKING TO CALL FOR THE RELEVANT RECORDS AND ALLOW THIS CRIMINAL PETITION BY QUASHING THE ORDER DATED 28.02.2024 IN CRL.MISC.NO.136/2020 PASSED BY THE LEARNED CIVIL JUDGE AND JMFC, KUNDGOL, AND ALLOW THE APPLICATION FILED U/S 311 OF CRIMINAL PROCEDURE CODE, IN THE INTEREST OF JUSTICE AND EQUITY.

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NC: 2024:KHC-D:6707
CRL.P No. 101074 of 2024

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petition is filed seeking to quash the order dated 28.02.2024 passed in Crl.Misc.No.136/2020 by the learned Civil Judge and JMFC, Kundgol and prayed to allow the application filed under Section 311 of Cr.P.C.

2. Heard learned counsel for petitioners. Inspite of service notice, the respondent remained absent and unrepresented.

3. The respondent has initiated proceedings against petitioners under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 and it is pending in Crl.Misc.No.136/2020. In the said proceedings, the respondent has been examined as P.W.1 and case has been posted for cross examination of P.W.1. Petitioners counsel did not cross examined the P.W.1 on 3-4 occasions even after grant of time by imposing cost. The learned Magistrate has passed the order dated 17.08.2023 NC: 2024:KHC-D:6707 taking cross examination of P.W.1 as 'nil' and also respondent side evidence as 'nil' and posted the case for arguments in the afternoon. In the afternoon hearing the arguments of learned counsel for petitioners, taken the arguments of respondent side as 'nil' and posted the case for order. Thereafter, petitioners got advanced the case, filed an application under Section 311 of Cr.P.C seeking recall of the order dated 17.08.2023. The said application came to be rejected by impugned order dated 28.02.2024. The said order is challenged in the present petition.

4. Learned counsel for petitioners would contend that if petitioners are given an opportunity to cross examine the P.W.1, they will conduct cross examination on the same day. With this he prayed to allow the petition.

5. On perusal of the order sheet, it is clear that inspite of granting 2-3 adjournment, learned counsel for petitioners did not conducted cross examination of P.W.1. An application filed under Section 311 of Cr.P.C by learned counsel for these petitioners who are respondents indicate NC: 2024:KHC-D:6707 that due to eye problem of learned counsel for petitioners herein could not cross examine P.W.1 on 17.08.2023.

6. Considering the said aspects, petitioners should be given an opportunity to cross examine P.W.1. Petitioners are permitted to cross examine the P.W.1 and lead their side evidence. Otherwise they will be deprived of putting forth their contention. Therefore, in the ends of justice petitioners should be given an opportunity to cross examine the P.W.1 and lead their evidence by recalling the order dated 17.08.2023.

In the result, the following

ORDER

- i) The petition is allowed.
- ii) The order dated 28.02.2024 passed by learned

Civil Judge and JMFC, Kundgol is set aside. The application filed under Section 311 Cr.P.C is allowed and the order dated 17.08.2023 is recalled subject to payment of cost of NC: 2024:KHC-D:6707 Rs.1,000/- . The petitioners herein have to cross examine the P.W.1 on date fixed by learned Magistrate in the month of May-2024 positively without seeking any adjournment.

iii) Petitioners shall deposit aforesaid cost of Rs.1,000/- on or before 02.05.2024.

Sd/-

JUDGE DSP CT:BCK

Sri. Lakshmi Srinivas vs Smt. S. M. Bhagyalakshmi on 2 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

-1-

NC: 2024:KHC:24705
CRL.P No. 199 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 199 OF 2018 (482)

BETWEEN:

1. SRI. LAKSHMI SRINIVAS
S/O LATE BETTASHETTY,
R/O HOUSE NO.346,
SRI LAKSHMI JANARDHANA TEMPLE STREET,
OLD TOWN MANDYA,
MANDYA CITY-571 401.

...PETITIONER

(BY SRI. CHETHAN B., ADVOCATE)

AND:

1. SMT. S. M. BHAGYALAKSHMI
W/O SRI LAKSHMI SRINIVAS,
R/AT FLAT NO.F-1,
1ST FLOOR,NO.15,
VIGNESH APARTMENT,
TEMPLE ROAD, MALLESHWARA,
BANGALORE-560 003.

Digitally
signed by

KIRAN

KUMAR R

Location:

HIGH

COURT OF

KARNATAKA

2. SUSMITHA M L
D/O SRI LAKSHMI SRINIVAS,

R/AT FLAT NO.F-1, 1ST FLOOR,
NO.15, VIGNESH APARTMENT, TEMPLE ROAD,
MALLESHWARA, BANGALORE-560 003.

...RESPONDENTS

(BY SRI. N C NARAYANA., ADVOCATE FOR R-1 & R-2)

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY
THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS
HON'BLE COURT MAY BE PLEASED TO QUASH THE ENTIRE
PROCEEDINGS AGAINST THE PETITIONER IN
-2-

NC: 2024:KHC:24705
CRL.P No. 199 of 2018

CRL.MISC.NO.174/2016 ON THE FILE OF III M.M.T.C.,
BENGALURU WHICH IS FILED UNDER SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005.

THIS PETITION, COMING ON FOR HEARING, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. This petition is filed challenging an order by which a sum of Rs.4,000/- was granted to the wife and a sum of Rs.3,000/- to the daughter as monthly maintenance.
2. The Trial Court has noticed that the wife and daughter had produced a compact disc containing the audio visuals of husband's program aired on the Television, but it has also taken note that the said fact itself would not indicate his income. The Trial Court, on consideration of the matter in its entirety, has come to the conclusion that a sum of Rs.4,000/- to the wife and Rs.3,000/- to the daughter as interim monthly maintenance is just and proper.
3. In my view, the discretion exercised by the Trial Court in awarding Rs.4,000/- and Rs.3,000/- to the wife NC: 2024:KHC:24705 and the daughter respectively as interim monthly maintenance does not warrant interference under Section 482 of the Cr.P.C. The petition is, therefore, dismissed.

Sd/-

JUDGE HNM

Sri M S Prakash vs Smt Savitha S D on 11 June, 2024

Author: V Srishananda

Bench: V Srishananda

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NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.226 OF 2021

BETWEEN:

SRI M S PRAKASH
S/O LATE SIDDALINGAPPA
AGED ABOUT 50 YEARS,
C/O SHIVANNA
TORENAGASANDRA VILLAGE,
MATTALLI POST,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK,
BANGALORE-562 162

...PETITIONER

(BY SRI VINOD KUMAR M, ADVOCATE)

Digitally AND:

signed by R

MANJUNATHA

Location: 1. SMT SAVITHA S D

HIGH COURT

D/O DODDAPPA SETTY

OF

KARNATAKA

AGED ABOUT 45 YEARS,

2. KUM GREESHMA

D/O PRAKASH M.S.

AGED 12 YEARS,

Sri M S Prakash vs Smt Savitha S D on 11 June, 2024

MINOR REPRESENTED BY HER
NATURAL GUARDIAN
SMT.SAVITHA S.D.

BOTH ARE RESIDENT OF

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NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

GENDEHALLI VILLAGE,
SHANIVARAPETE VILLAGE AND HOBLI,
BELURU TALUK,
HASSAN DISTRICT-573 121

RESPONDENTS

(BY SRI HALLUR SHIVAYOGI BASAVARAJ, ADVOCATE FOR
R1 AND R2)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT/ORDER
DIRECTING PAYMENT OF AMOUNT TO THE RESPONDENT
DATED 08.02.2019, PASSED IN CRL.MISC.NO.476/2014 BY
THE HONBLE CIVIL JUDGE AND JMFC BELURU UNDER
SECTION 12 OF DV ACT AND ORDER PASSED BY THE 2ND
ADDITIONAL DISTRICT AND SESSIONS JUDGE AT HASSAN
DATED 16.01.2020 IN CRL.A.NO.121/2019.

THIS CRL.RP COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

ORDER

Heard Sri Vinod Kumar, learned counsel for the revision petitioner and Sri Halluru Shivayogi Basavaraj, learned counsel for respondent Nos.1 and 2.

2. This revision petition is filed by the husband, who has suffered an order before the learned Trial Magistrate in C.Mis.No.476/2014 and was directed to pay Rs.5000/- per month as the maintenance in a petition filed under Section 12 of the Protection of women from Domestic Violence Act ('D.V.Act' for short) and confirmed by the learned District Judge in the First Appellate Court.

3. Facts in brief which are utmost necessary for disposal of the petition are as under:

Wife and her minor daughter being the petitioners filed a petition under Section 12 of the D.V. Act contended that there was a domestic violence and they were pushed out of the shared residence by the revision petitioner/respondent - husband.

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4. Based on the allegations found in the Criminal Miscellaneous Petition, learned Trial Magistrate issued notice.

5. Respondent appeared before the Court and contended that after the delivery, petitioner/wife left the matrimonial home, during the confinement period, when she was eight months pregnancy and thereafter she did not return.

6. It is also the case of the respondent/husband that the petitioner/wife has left the company of the respondent voluntarily and therefore, no orders can be passed in the petition filed by the wife under Section 12 of the D.V. Act.

7. Learned Trial Magistrate based on the rival contentions of the parties, allowed the parties to place evidence on record and raised two points, stating that there was a domestic violence and as such the petitioner/wife is entitled for relief under Section 12 of the D.V. Act. While answering the said point in affirmative, the learned Trial Judge felt that it is better to order for maintenance of NC: 2024:KHC:20478 Rs.5000/- instead of directing the wife and her minor daughter to join the husband as there was no possibility of peaceful leaving.

8. Being aggrieved by the same, revision petitioner/the husband approached the First Appellate Court.

9. Learned Judge in the First Appellate Court secured the records and after hearing the parties in detail and dismissed the appeal. While dismissing the appeal has held as under:

"Appeal filed by the appellant under Section 29 of Domestic Violence Act, is hereby dismissed.

Consequently, the impugned order passed by the learned Civil Judge and JMFC., Belur in Crl.Mis.476/2014 dated 06.02.2019 is hereby confirmed.

Office is hereby directed to send the records along with copy of this order to the trial Court."

10. Being aggrieved by the same, revision petitioner/husband is before this Court.

11. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition contended that NC: 2024:KHC:20478 after the petition under Section 12 of the D.V. Act came to be instituted, there were other proceedings between the parties and the parties are not separated by decree of divorce and during the pendency of those proceedings there was a 'Oppige Pathra', there under, the wife has received Rs.3,00,000/- and therefore, no amount is payable by the husband and sought for allowing the revision petition.

12. Per contra, counsel for the respondent under the instructions from the respondent before this Court submits that no amount has been received under the alleged 'Oppige Pathra', which is a ingenious concoction by the husband and sought for dismissal of the revision petition.

13. Having heard the parties in detail, this Court perused the material on record meticulously. On such perusal of the material on record, there is no dispute that the revision petitioner married the respondent and from the wedlock, a girl child was born.

NC: 2024:KHC:20478

14. It is the case of the wife that she has been sent out from the shared residence, whereas the husband maintained that the wife went for confinement and did not return.

15. If the contention of the husband is to be accepted and if he is interested in the wife, he would have filed a petition for conjugal rights and not for divorce.

16. Fact remains that the learned Trial Magistrate after considering the oral and documentary evidence placed on record, found that there was a Domestic Violence on the wife by the husband during her stay in the house of husband and therefore, awarded sum of Rs.5000/- as maintenance as an alternate remedy.

17. The said order was challenged before the First Appellate Court.

18. Learned Judge in the First Appellate Court also re- appreciated the material on record. In fact, both the Courts have placed reliance Ex.P.1 which is report given by the protection officer. Protection officer being a neutral NC: 2024:KHC:20478 person and a person who has been appointed under the statute did not possess any enmity or animosity against the husband/ revision petitioner nor extra affinity towards the respondent/wife. His report is to be construed as an official act which has been discharged in due course. Therefore, the contents of Ex.P.1 enjoys the

presumption as is found in Section 114 (e) of the Indian Evidence Act.

19. No doubt, it is a rebuttal presumption. To rebut the said presumption, except marking the order passed in M.C.No.119/2014, no other documents are placed on record. Till the time, the parties were separated by the decree of divorce; the petitioner is bound to pay as ordered by the learned Trial Magistrate for sending out the wife from the shared residence without there being just cause.

20. Further, so called 'Oppige Pathra' was not a part of the records, either before the trial Magistrate or before the learned Judge in the First Appellate Court. Accordingly, when the same is seriously disputed, this Court cannot countenance the 'Oppige Pathra' and take a different NC: 2024:KHC:20478 opinion than that of the Trial Magistrate and learned Judge in the First Appellate Court.

21. In view of the foregoing discussion, this Court is of the considered opinion that there is no merit in the revision petition.

Accordingly, following:

ORDER

(i) Criminal Revision Petition is hereby rejected.

(ii) Amount in deposit is ordered to be withdrawn
by the respondent/wife under due
identification.

Sd/-
JUDGE

MR

Sri. Mahadevaswamy H S vs State Of Karnataka By on 20 June, 2024

Author: V Srishananda

Bench: V Srishananda

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NC: 2024:KHC:22674
CRL.RP No. 163 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA
CRIMINAL REVISION PETITION NO.163 OF 2024
BETWEEN:

SRI. MAHADEVASWAMY H S
S/O LATE SHANHAVEERAPPA
AGED ABOUT 52 YEARS
R/A HAGALAHALLI VILLAGE
C A KERE HOBLI
MADDUR TLAUK
MANDYA-571428

...PETITIONER

(BY SRI GAURAV G K, ADVOCATE)
AND:

1. STATE OF KARNATAKA BY
BELAKAVADI POLICE
MANDYA-571401

(REPRESENTED BY LEARNED

Digitally signed by STATE PUBLIC PROSECUTOR

MALATESH HCK, BENGALURU-01

KC

Location: 2. SRI SRIKANTASWAMY
HIGH S/O NANJAPPA
COURT OF AGED ABOUT 63 YEARS
KARNATAKA R/AT DYAVAPATTANA VILLAGE
B.G.PURA HOBLI
MALAVALLI TALUK
MANDYA

... RESPONDENTS

(BY SRI CHANNAPPA ERAPPA, HCGP FOR R1;
R2 -SERVED)

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NC: 2024:KHC:22674
CRL.RP No. 163 of 2024

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401
CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 31.10.2023
PASSED IN S.C.NO.113/2022 ON THE FILE OF THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MANDYA
FOR OFFENCE P/U/S 302, 201, 498-A, 304-B R/W SECTION 34
OF IPC AND SECTION 3, 4 OF DP ACT AND CONSEQUENTLY
DISCHARGE HIM FROM THE CASE.

THIS CRL.RP COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Gaurav G.K. and Sri Channappa Erappa, learned High Court Government Pleader.

2. Petitioner/Accused No.2 being the father of accused No.1 has been charge sheeted by Belakavadi police, Halaguru Circle, Mandya District, in respect of Crime No.0117/2021 dated 17.11.2021 for the offences punishable under Sections 304B, 302, 201, 498A r/w Section 34 of the Indian Penal Code along with Sections 3 and 4 of the Protection of Women from Domestic Violence Act.

3. Facts of the case reveal that wife of accused No.1 who is daughter of the complainant-Shrikantaswamy, was married to accused No.1 during the Covid Pandemic period. Marriage did not subsist for a long and there was bickering in the matrimonial life of accused No.1 and the deceased.

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4. The deceased often used to visit her parental house and complained about physical and mental harassment and also the demand of dowry by the accused persons. Complainant not in a position to meet the demand of dowry, somehow arranged Rs.25,000/- and got it paid through mobile transfer from his son's friend to the account of the accused persons.

5. Despite meeting out such demand, there was further demand of dowry and therefore, on two occasions, complainant somehow arranged and paid Rs.50,000/- as dowry. Despite all these demands being met, unable to bear the harassment, daughter of the complainant came back to the house of the complainant.

6. In the meantime, she was pursuing her computer education at K.M.Doddi and used to visit the said training centre from her parental house. When the matter stood thus, on 15.11.2021, accused

No.1 met the deceased enroute her visit to the computer centre and took her on his two wheeler. However, because of the breakdown of the motorcycle, she was left at that place by the accused No.1 and he went back. The NC: 2024:KHC:22674 said incident was reported by the daughter of the complainant to the complainant on the same day.

7. Again on 16.11.2021, as usual, daughter of the complainant left the house of the complainant to attend the computer class, but did not return. Being anxious father, complainant searched for his daughter in the places of acquaintance and also called the accused including the present petitioner to find out the whereabouts of his daughter.

8. No information was obtained by such a search. Immediately, complainant visited the house of the accused and requested the accused No.1 to accompany him to the police station to lodge the complaint. Accused No.1 said to have told that the complaint can be given to the police, next day. There was a passive response from the present petitioner with regard to the enquiry made by the complainant.

9. Later on, again, when the complainant called the accused persons on 17.11.2021 morning to visit police to lodge the complaint, it is the present petitioner who replied stating that accused No.1 has consumed poison and wanted to commit suicide. Left with no alternative, complainant approached the NC: 2024:KHC:22674 police and lodged the missing complaint. No information was received up to next four days with regard to missing of his daughter.

10. On 21.11.2021, police said to have informed the complainant stating that it is the accused No.1 who took the deceased on Honda Activa Scooter on 16.11.2021 and taking advantage of the flowing water in a canal, told the daughter of the complainant to wash her hands and legs so as to visit the nearby hillock. Daughter of the complainant blindly believed the instructions of accused No.1 and went near the canal for washing her hands and legs and at that juncture, it is accused No.1 who pushed the daughter of the complainant into the canal and then came back as if he did not know anything. This information was received by the police after apprehending the accused No.1.

11. Since the entire incident is based on circumstantial evidence and dead body was traced at the instance of the voluntary statement of the accused No.1, police not only registered a case against the accused No.1, taking note of the NC: 2024:KHC:22674 complaint averments, registered the case against the parents and uncle of accused No.1.

12. After thorough investigation, based on the material collected by the Investigation Agency, the Investigation Officer thought it fit to file charge sheet only against the present petitioner and his son, while dropping the case against the mother and uncle of accused No.1.

13. Presence of the accused persons was secured before the Court. When charges were to be framed, present petitioner filed an application under Section 227 of the Code of Criminal Procedure to discharge him from the case. State opposed the said application by filing detailed written objection.

14. The learned II Addl. District and Sessions Judge, Mandya, heard the parties in detail on the application and by the Order dated 31.10.2023 passed in S.C.No.113/2022, dismissed the request made by the present petitioner.

15. Being aggrieved by the same, petitioner/accused No.2 is before this Court in this revision.

NC: 2024:KHC:22674

16. Sri Gaurav, learned counsel for the revision petitioner, reiterating the grounds urged in the petition, vehemently contended that there is no material on record to show that there was physical and mental torture imparted to the deceased by the present petitioner and therefore, he cannot be held responsible for the aforesaid offence.

17. He also pointed out that the material collected by the Investigation Agency itself shows that it is the accused No.1 who nurtured the idea of taking away the life of daughter of the complainant with an intention to remarry some other person and therefore, attributing the intention to the present petitioner is totally unwarranted and sought for allowing the revision.

18. He also pointed out that the principles of law enunciated in the case of Vijayan vs. State of Kerala, reported in (2010)2 SCC 398, Amith Kapur vs. Rameshchandra reported in (2012)9 SCC 460, Dinesh Tivari vs. State of UP. reported in AIR 2014 SC 3502, State of Tamilnadu vs. N.Suresh Rajan reported in 2014 Crl.L.J 1444, State of Karnataka vs. Muniswamy and others reported in AIR 1997 SC 1489, Sangi Brothers vs. Sanjay Chowdary reported in 2008 SAR (Crl.) P.897, Shivaram NC: 2024:KHC:22674 Shetty vs. Delhi Police reported in ILR 2008 KAR 2876 has not been properly appreciated by the learned Trial Judge while dismissing the application filed by the petitioner.

19. In support of his contentions, learned counsel also placed on record the following judgments:

(i) Kahkashan Kausar alias Sonam and others vs. State of Bihar and others reported in (2022)6 SCC 599.

"16.*****

6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

(ii) Rajeev Kumar vs. State of Haryana reported in (2013)16 SCC 640.

18. From the aforesaid evidence of P.W.5, it is clear that the marriage between the appellant and the deceased took place on 28.1.1989 and the demand of dowry by the appellant and the beatings for more dowry was after the marriage. P.W.5 has also stated that on 19.2.1991 the deceased came to him at Kartarpur and told him that two days prior to NC: 2024:KHC:22674 19.2.1991, the appellant

gave her merciless beating. P.W.5 has, however, not stated that the beating the appellant gave to the deceased on 19.2.1991 was in connection with demand of dowry. One of the essential ingredients of the offence of dowry death under Section 304-B IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry soon before her death and this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under Section 113-B of the Evidence Act. As this ingredient of Section 304-B IPC has not been established by the prosecution, the trial court and the High Court were not correct in holding the appellant guilty of the offence of dowry death under Section 304-B IPC."

(iii) L.Krishna Reddy vs. State by Station House Officer and others reported in (2014)14 SCC 401.

"5. The IIIrd Additional Sessions Judge, Pondicherry favoured the position that the proceedings could continue against the respondent parents (accused 2 and 3) notwithstanding the devastating death of their son (accused 1) despite prosecution against him having abated. The learned Additional Sessions Judge specifically recorded the fact that the Public Prosecutor had conceded that there appeared to be no direct involvement of the father-in-law and mother-in-

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NC: 2024:KHC:22674 law in the murder, but that since it was a murder case the discharge may not be considered before the trial. The learned Additional Sessions Judge noted that the parents were implicated only on the basis of the statements recorded under Section 161 Cr.P.C; he was of the prima facie view that the motive behind the murder of Sujatha was dowry.

(iv) State of Karnataka vs. Dattaraj and others reported in (2016) 12 SCC 331.

"15.xxxxxxxxxxxxx "15.xxxxxxxx Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

20. Per contra, learned High Court Government Pleader supports the impugned Order.

21. Learned High Court Government Pleader also emphasizes that the material available on record collected by the

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NC: 2024:KHC:22674 prosecution alone is to be looked into while framing the charge and not the defence that is to be taken by the accused.

22. He further points out that there is a presumption available to the prosecution under Sections 113A and 113B of the Indian Evidence Act, 1872 in respect of offence punishable under Section 304B of IPC and therefore, the material evidence available on record is sufficient enough to hold that accused No.2 has to stand for trial for the aforesaid offence and sought for dismissal of the revision petition.

23. He further emphasized that investigation is impartial and it is not perfunctory in nature inasmuch as even though the allegation were found against the mother and uncle of accused No.1, Investigation Officer after thorough investigation and collection of material evidence, thought it fit that no case is made out against the mother and uncle of accused No.1 and dropped them while filing the charge sheet.

24. Thus, role of Investigation Officer is to be appreciated that he did not find any material against the mother and uncle of the accused No.1, but has collected the material so as to

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NC: 2024:KHC:22674 proceed against the father of accused No.1 who is the present petitioner and therefore, sought for dismissal of the petition.

25. In view of the rival contentions of the parties, this Court bestowed its best attention to the material on record meticulously.

26. On such perusal of the material on record, it is seen that there is a specific allegation against the present petitioner in the charge sheet materials. Especially, with regard to the demand of dowry amount and receipt of dowry amount by the present petitioner is evidenced by the material documents collected by the petitioner.

27. In paragraphs 11 to 14, the learned Trial Judge has discussed in detail the material available on record so as to proceed against accused No.2 who is the revision petitioner. Same is culled out hereunder for ready reference.

11. After marriage accused No.1 picked up quarrel with deceased Sandhya for the reason that they did not give dowry as demanded by them, abused and gave mental torture to her. CW-1 and 3 came to know about this from deceased, CW-3 as more dowry amount from her Canara Bank Account No.04342300027128 through her mobile

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NC: 2024:KHC:22674 No.7892179249 to the friend of accused No.1, Karnataka Bank Account No.9272500101437901 to the mobile No.9964715254 sent Rs.25,000/- through Phone-pay. Accused No.1 harassed Sandhya to give more dowry from her parents house and CW-1 gave Rs.20,000/- one time and Rs.30,000/- on another time totally gave Rs.50,000/- to deceased and Accused No.1 obtained it.

12. Thereafter accused No.1 to fulfill his habits took golden necklace of Sandhya, gave it to CW-20 and obtained 9 S.C. No.113/2022 money. He pledged engagement ring in the name of his friend CW-22 in Neel Kamal Pledge Shop at Chandupura Gate. Accused No.1 went to the house of CW-1 asked to give chain of her mother, CW-2 gave it to accused No.1. He threatened that if they inform the matter to his parents, he will desert their daughter. Thereafter gave chain to CW-19 and obtained amount.

13. Deceased Sandhya used to go to computer class at Manipal Computer Education Centre, K.M. Doddi and doubting her chastity, in order to kill her on 15.11.2021 went near computer class, talked with her took her in bike, as bike stopped, he left her. On 16.11.2021 accused No.1 in order to kill Sandhya took her in Honda Activa motor bike bearing No.KA-11-R-0532 came to K.M. Doddi at 10.30 a.m. took her to various places, CW-4 and CW-5 saw accused No.1 and deceased Sandhya in scooter near Thenkahalli Gate and they were proceeding to Kunduru Betta. Accused No.1 under the guise of proceeding to Kunduru Betta, took her on canal top road at 1.00 p.m. asked Sandhya to wash her hands and legs in the Nanjapura Irrigation, Kunduru Canal water, when Sandhya was getting down in the flowing water, he strangulated the

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NC: 2024:KHC:22674 neck of Sandhya drowned her in water, suffocated her and killed her and in order to destroy evidence pushed the dead body in the water.

14. It is the contention of accused No.2 that on perusal of 2 complaints, there is no allegation made against accused No.2, accused No.2 has nothing to do with the incident, there is delay in moving criminal law into motion, due to pandemic, there was no occasion to demand dowry, there are no eye witnesses, the case is based on circumstantial evidence, if accused No.2 demanded dowry, question of deleting accused Nos.3 and 4 from charge- sheet does not arise, there is no participation of accused No.2 in committing murder of deceased, there is no material to file charge-sheet against accused No.2 and prayed to discharge accused No.2."

28. Thus, the material available on record is sufficient enough to make out a triable case as against accused No. Further, the principles of law enunciated in the decisions relied on by the learned counsel for the petitioner was also discussed by the learned Trial Judge in detail, in the impugned Order.

29. It is settled principles of law that it is the material placed on record by the prosecution alone to be looked into at the time of framing of charge and not the defence.

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NC: 2024:KHC:22674

30. In this regard, gainfully this Court places reliance on the dictum of the Hon'ble Apex Court in the case of State of Orissa vs. Debendra Nath Padhi, reported in (2005)1 SCC 568, relevant

paragraph is culled out hereunder:

17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207

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NC: 2024:KHC:22674 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused"

cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At

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NC: 2024:KHC:22674 the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

19. It may also be noted that, in fact, in one of the cases under consideration (SLP No. 1912), the plea of alibi has been taken by the accused in a case under Section 302 read with other provisions of the Penal Code, 1860. We may also note that the decisions cited by learned counsel for the accused where the prosecutions under the Income Tax Act have been quashed as a result of findings in the departmental appeals have no relevance for considering the question involved in these matters.

20. Reliance placed on behalf of the accused on some observations made in *Minakshi Bala v. Sudhir Kumar* [(1994) 4 SCC 142 : 1994 SCC (Cri) 1181] to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under: (SCC p.

145) "7. If charges are framed in accordance with Section 240 CrPC on a finding that a

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NC: 2024:KHC:22674 prima facie case has been made out -- as has been done in the instant case -- the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question

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NC: 2024:KHC:22674 involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.

22. Reliance has also been placed on the decision in the case of P.S. Rajya v. State of Bihar [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] where this Court rejected the contention urged on behalf of the State that the points on which the accused was seeking quashing of criminal proceedings could be established by giving evidence at appropriate time and no case had been made out for quashing the charge itself. The charge was quashed by this Court. In this case too only on peculiar facts of the case, this Court came to the conclusion that the criminal proceedings initiated against the appellant-accused could not be pursued. Those peculiar facts have been noticed in paras 14, 17, 18 and 19 of the decision. The contention of the accused based on those peculiar facts has been noticed in para 15 and that of the respondent that CBI was entitled to proceed on the basis of the material available and the mere allegations made by the accused cannot take the place of proof and that had to be gone into and established in the final hearing, has been noticed in para 16. After noticing those contentions and the decision in the case of State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] laying down the guidelines relating to the exercise of extraordinary power under Article 226 or the

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NC: 2024:KHC:22674 inherent power under Section 482 of the Code for quashing an FIR or a complaint, this Court, on the peculiar facts, came to the conclusion that the case of the appellant could be brought under more than one head given in Bhajan Lal case [1992 Supp (1) SCC 335 :

1992 SCC (Cri) 426] without any difficulty so as to quash the proceedings. In this background, observations were made in para 23 on which reliance has been placed on behalf of the accused whereby rejecting the contention of the State as noticed in para 16, the Court came to the conclusion that the criminal proceedings deserve to be quashed. In this case too the question was not about the right of the accused to file material at the stage of framing charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110] sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein the trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed.

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to

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NC: 2024:KHC:22674 produce any material. Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code reads as under:

"91. Summons to produce document or other thing.--(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2)-(3)***"

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for

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NC: 2024:KHC:22674 the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right

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NC: 2024:KHC:22674 on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

31. In the backdrop of the aforesaid legal principles, the material on record is appreciated in the light of the arguments put forth on behalf of the parties.

32. On such perusal, it is not in dispute that daughter in law of the present petitioner who is the daughter of the complainant was married to the son of the revision petitioner.

33. Admittedly, she was found missing on and from 16.11.2011. Till up to 21.11.2011 she was not traced and her dead body was traced only on 21.11.2021 that too, at the instance of the son of the present petitioner who is accused No.1. Material on record would go to show that after the marriage, money was transferred through mobile telephone from friend of the complainant's son to the accused which prima facie shows that there was demand of dowry and same was complied with by the complainant.

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NC: 2024:KHC:22674

34. Learned counsel for the petitioner to substantiate his contentions, while referring to the decisions relied upon by him referred to supra, has drawn attention of this Court to the judgment in the case of Kakhshan Kausar, wherein, Their Lordships of the Hon'ble Supreme Court in the said case held that, if the parents of the victim have not shared the common roof, normally such person should not be proceeded with criminal prosecution, where harassment is complained of either by the wife or her parents.

35. In the case on hand, admittedly, accused Nos.1 and 2 shared the common roof. Therefore, principles of in the case Kakhshan Kausar would not be applicable to the case on hand.

36. In the case of Rajeev Kumar supra, Their Lordships were of the opinion that the medical report having regard to the nature of injury sustained by the victim where the victim died on account of burn injuries, took into consideration about the role of the accused and then decided that he had no proximity with the time or the

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NC: 2024:KHC:22674 incidence and therefore, were of the opinion that such person should not be made to stand trial.

37. Facts in the present case are altogether different. In fact, according to the prosecution, based on the voluntary statement given by accused No.1 important circumstances of the prosecution case viz., detection of crime and the place of dead body being found is recovered by the police.

38. The incident admittedly has taken place on 16.11.2021 and when there was a call made by the complainant to the present petitioner in the evening of 16.11.2021 and again in the morning of 17.11.2021, there was a passive response from the present petitioner. The deceased is none other than the daughter in law of accused No.2. If not sympathy, at least, empathy should have been there to the conduct of the present petitioner in searching the missing daughter in law. The conduct shows that he did not care to find out what has happened to his own daughter in law.

39. Further, the circumstance that the accused No.1 said to have attempted to commit suicide is intimated by

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NC: 2024:KHC:22674 accused No.2 to the complainant in a very casual manner. When there was a call made by the complainant to lodge missing complaint about his daughter, accused No.2 as a normal prudent person, should have accompanied the complainant in lodging the complaint or for that matter, accused No.1 being the husband of the deceased, should have accompanied if they are so innocent as is sought to be portrayed.

40. But accused No.2 says that his son i.e., accused No.1 has tried to commit suicide. Even that reply was in a very casual manner.

41. No details are forthcoming as to whether accused No.1 was taken to the hospital and was that a true fact. No other material is also forthcoming from the application of the accused No.2 as to what is the normal prudent person would behaved if his son has tried to commit suicide. In other words, as could be seen from the material on record, probably the accused No.1 must have revealed what has happened on 16.11.2021 to accused

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NC: 2024:KHC:22674 No.2 and therefore, they were fearing to visit the police station.

42. Anyway, this Court at this stage, by holding a mini trial, cannot form any definite opinion as it would affect the rights of the parties during trial, one way or the other.

43. Moreover, what is to be looked into at this stage is the prosecution material itself and it is for the accused to rebut the presumption available under Sections 113A and 113B of the Indian Evidence Act, 1872 after the prosecution discharges the initial burden in the trial.

44. Suffice to say that money has been received by accused No.2 from complainant's son's friend through mobile transfer, it would prima facie establish that accused No.2 is part of the crime.

45. Coming to question of decisions in L.Krishna Reddy supra learned counsel for the petitioner drew the attention of this Court to the paragraph 5 wherein, Their Lordships had an occasion to deal with the statement recorded by the Investigation Agency under Section 161 of Cr.P.C.

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NC: 2024:KHC:22674

46. In the case on hand, not only the statement recorded under Section 161 of Cr.P.C is available, but also statement recorded under Section 164 of Cr.P.C. is also available which is part of the charge sheet material.

47. Therefore, judgment of L.Krishna Reddy would not improve the case of the petitioner in accepting the request for discharge.

48. In the case of Dattraj supra, their Lordships were of the opinion that accepting of the gift would per se would not amount to dowry. It is settled principles of law and that should be decided only at the end of the trial, as in the case on hand, receipt of money that too by phone transfer cannot be treated as gift, that too after the marriage. Therefore, argument that is put forth on behalf of the petitioner that the judgment of Dattaraj supra would help his case cannot be countenanced in law.

49. In view of the foregoing discussion, having regard to the material collected by the Investigation Agency, in the light of the principles of law enunciated by the Hon'ble

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NC: 2024:KHC:22674 Apex Court in the case of Debendra Nath Padi supra, this Court is of the considered opinion that there are enough materials to frame charge and accused has to stand for trial and then discharge his burden by placing the rebuttal evidence in the trial.

50. Taking note of these aspects of the matter, this Court is of the considered opinion that grounds in the revision petition are hardly sufficient to discharge the accused.

51. Hence, the following:

ORDER

(i) Appeal is meritless and is hereby dismissed.

(ii) It is made clear that the observations made by this Court is for disposal of the revision petition, shall not influence the learned trial Judge in one way or the other during the trial.

Sd/-

JUDGE kcm

Sri Mahesh S/O Hirachand Oswal vs Smt Akshata W/O Mahesh Oswal on 21 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

REV.PET FAMILY COURT NO.100136 OF 2023
C/W
REV.PET FAMILY COURT NO. 100191 OF 2023

IN RPFC NO.100136/2023

BETWEEN:

SRI MAHESH S/O. HIRACHAND OSWAL,
AGED ABOUT 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/AT: FLAT NO. 402, 25/1,
MEHTA COLONY, E-WARD,
SAMRAT NAGAR, KOLHAPUR CITY,
KOLHAPUR, MAHARASHTRA.

...PETITIONER

(BY SRI VAIJAYANTHIMALA B., AND
MAMATHA B.L., ADVOCATES)

Digitally
signed by V N
BADIGER
Location:
High Court of
Karnataka

AND:

1. SMT. AKSHATA

W/O. MAHESH OSWAL,
AGED ABOUT 37 YEARS,
OCC: HOUSE WIFE,
R/AT: C/O. SMT. PREMA ANIL
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
OPP. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD,
TILAKWADI, BELAGAVI,
PIN CODE - 590 001.

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGED ABOUT 8 YEARS,
OCC: STUDENT,
R/AT. C/O. SMT. PREMA ANIL,
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
POO. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD, TILAKWADI,
BELAGAVI - 590 001.

(RESPONDENT NO.2 BEING MINOR
IS REPRESENTED BY HIS NEXT FRIEND
MOTHER RESPONDENT NO.1)

... RESPONDENTS

(BY SRI NAGARATNA S. PATTAR,
SHAMSUNDAR N. PATTAR,
S.B.DEYANNAVAR, ADVOCATE FOR R1;
R2 IS MINOR R/BY R1)

THIS RPFC IS FILED UNDER SEC.19(4) OF THE FAMILY
COURT ACT, AGAINST THE JUDGMENT AND ORDER DATED
07.07.2023, IN CRL.MISC. NO.543/2018, ON THE FILE OF THE
PRINCIPAL JUDGE, FAMILY COURT, BELAGAVI, PARTLY
ALLOWING THE PETITION FILED UNDER SEC.125 OF CR.P.C.
AND ETC.,

IN RPFC NO.100191/2023

BETWEEN:

1. SMT. AKSHATA
W/O. MAHESH OSWAL,
AGE: 37 YEARS,

OCC: HOUSEWIFE,
R/O C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY
OPP. ASHRAYA VIDYA ASHRAM,
DATTA MANDIR ROAD, TILKWADI

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

BELAGAVI.

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGE: 08 YEARS, OCC: STUDENT,
R/O. C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY,
OPP. ASHRAYA VIDYA ASHRAM,
DATA MANDIR ROAD, TILAKWADI,
BELAGAVI.

(PETITIONER NO.2 BEING
MINOR IS REPRESENTED BY
HIS GAURDIAN MOTHER
PETITIONER NO. 1)

...PETITIONERS

(BY NAGARATHNA S. PATTAR AND
S.B.DEYANNAVAR, ADVOCATES)

AND:

SRI MAHESH
S/O. HIRACHAND OSWAL,
AGE: 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/O FLAT NO 402, 25/1, MEHTA COLON,
E-WARD, SAMRAT NAGAR,
KOLHAPUR CITY, KOLHAPUR,
MAHARASHTRA.

...RESPONDENT

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY
COURT ACT, 1984, PRAYING TO, THE ORDER DATED
07.07.2023 PASSED IN CRL.MISC.543/2018 BY THE PRINCIPAL
JUDGE, FAMILY COURT, BELAGAVI AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

ORDER

1. This petition RPFC No.100136/2023 is filed by the husband aggrieved by the order dated 07.07.2023 passed in Crl.Misc.No.543/2018 on the file of the Principal Judge, Family Court, Belagavi, by which while partly allowing the petition filed under Section 125 of Cr.P.C., the Family Court has directed the petitioner herein to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2 from the date of petition.
2. The above petition for maintenance seeking grant of Rs.25,000/- per month to respondent No.1 and Rs.15,000/- per month to respondent No.2 was filed under Section 125 of Cr.P.C. contending that respondent No.1 is the legally wedded wife of the petitioner herein and their marriage was solemnized on 07.01.2014 and that the respondent No.2 was born out of the said marriage. That soon after the marriage, respondent No.1 was subjected to physical and mental harassment at the hands of the NC: 2024:KHC-D:8323 petitioner herein and his mother. Due to the ill-treatment, the respondent No.1 along with the child started staying with her parents from the year 2016 onwards. That the petitioner herein despite having sufficient income in excess of Rs.2,00,000/- from his business from Ugam Metal Industries, had neglected and refused to maintain his wife. Several other allegations of ill-treatment have been made in the petition. Respondent No.1 had also initiated proceedings under the provisions of Women Domestic Violence Act, 2005 and the petitioner herein has initiated proceedings under the Guardians and Wards Act, 1890. Under the circumstances, the above petition under Section 125 of Cr.P.C. was filed seeking maintenance.
3. Statement of objection filed by the petitioner herein admitting his relationship with the respondents, however denied all the allegations of ill-treatment and harassment. It is also denied that the petitioner herein is having income in excess of Rs.2,00,000/- and he owning a flat and two houses as contended by the respondent No.1 NC: 2024:KHC-D:8323 wife. It is contended that respondent No.1 was not interested to stay with the petitioner and his mother, which caused discord amongst them. That the respondent No.1 herself has left the matrimonial home refusing to stay with the petitioner. That he had shown all the care and concern towards the respondents. That the petitioner is working in a shop earning salary less than Rs.9,000/- per month and the said income is not sufficient to maintain them. On the other hand, respondent No.1 is a MBA graduate, capable of earning for herself, as such, she do not require any financial assistance from the petitioner.
4. Considering the pleading and evidence led in by the parties, the Family Court allowed the petition holding that there were sufficient reasons and grounds for the respondent No.1 not to stay with the petitioner. The Family Court also on assessment of the evidence produced by the parties, came to the conclusion that the petitioner be directed to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2.

NC: 2024:KHC-D:8323 Being aggrieved by the same, the petitioner-husband is before this Court seeking reduction of maintenance amount and respondent-wife and child is before this Court seeking enhancement of maintenance amount.

5. Learned counsel for the petitioner-husband reiterating the grounds urged in the memorandum of petition submitted that the Family Court grossly erred in accepting the contention of respondent wife and child of petitioner having income as claimed by them. She submits that the so called Ugam Metal Industries is running scrap business and standing in the name of the mother of the petitioner and said business is not earning amount as claimed by the respondents. She submits that the affidavit of income and expenditure of the petitioner was filed before the Family Court and the same has remained uncontested. She submits that the income being drawn by the petitioner is just about Rs.9,000/- and the impugned order directing the petitioner to pay Rs.12,000/-

NC: 2024:KHC-D:8323 in aggregate, would cause serious hardship. Hence, the petition.

6. On the other hand, learned counsel appearing for the respondent wife who has also filed petition for enhancement of maintenance, contend that the Family Court in its judgment at paragraph 29 onwards has dealt in detail with regard to income and the properties of the petitioner and has declined to accept the contention of the petitioner of he not owning the Ugam Metal Industries. She also submits that in that view of the matter, inference needs to be drawn that the petitioner himself owning Ugam Metal Industrial and earning amount in excess of Rs.2,00,000/- per month. She also submits that the petitioner is owning immovable properties, earning rental income from it. Thus, she submits that sufficient material is placed on record to justify the claim of the respondents, of the petitioner earning in excess of Rs.2,00,000/-, which eventually should be considered while determining the maintenance to be paid to the respondents. Hence, she NC: 2024:KHC-D:8323 submits that the maintenance amount as awarded by the Family Court be enhanced to Rs.25,000/- to respondent No.1 and Rs.15,000/- to respondent No.2.

7. Heard and perused the records.

8. The marriage between the petitioner and respondent No.1 and respondent No.2 being their child, is not in dispute. Petitioner and respondents staying separately from the year 2016 is also not in dispute. The petition and counter petition under different provisions of family law have been filed by the parties sufficient to infer that there is serious discord between the parties. Though the respondent wife has contended the petitioner having income in excess of Rs.2,00,000/-, the material evidence brought on record would not justify the said claim. The Family Court in the impugned judgment at paragraphs 29 to 33 has assessed and analyzed the evidence produced by the parties and has thereafter come to the conclusion that the respondents claim would be justified if they are

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NC: 2024:KHC-D:8323 paid Rs.8,000/- and Rs.4,000/- per month respectively. Accordingly, partly allowed the petition.

9. In the petition filed by the husband seeking reduction, except contending that he does not own and posses Ugam Metal Industries, nothing is being urged. Even if he is earning Rs.9,000/- as claimed, no satisfactory material in that regard is produced either. Petitioner being healthy and able bodied person cannot claim his inability to pay the amount as awarded by the Family Court. Similarly, in the absence of any acceptable material on record regarding the petitioner having income in excess of Rs.2,00,000/-, the respondents cannot be heard for enhancement of maintenance as claimed.

10. In the light of the pleadings and material evidence made available by the parties, including filing of the affidavits as required, in the considered view of this Court, the Family Court has arrived at a just and reasonable conclusion directing the petitioner herein to

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NC: 2024:KHC-D:8323 pay Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2.

11. In that view of the matter, for the present, this Court do not see any reason to interfere with the order passed. Accordingly, both the petitions are dismissed confirming the order passed by the Family Court.

SD/-

JUDGE KGK/CT-ASC

Sri. Manjunatha vs Smt. K.V.Pooja on 4 January, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC:370
CRL.P No. 5355 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL PETITION NO. 5355 OF 2023
BETWEEN:

SRI MANJUNATHA
S/O SURESH @ RANGANATAHA
AGED ABOUT 34 YEARS
R/O SHREEDHARA NILAYA
B H MAIN ROAD
LOWER HUTHTHA, SHREEDHARA SWAMY ASHRAYA
BACK SIDE OF KANCHANA ICE- CAFE
BHADRAVATHI TOWN
SHIVAMOGGA DISTRICT - 577 301.

...PETITIONER

(BY SMT. SHAKUNTHALA, ADVOCATE)

AND :

SMT. K.V.POOJA
W/O SRI MANJUNATHA
AGED ABOUT 29 YEARS
R/O HOUSE No.6/693/1, WARD No.4
MANDIPETE MAIN ROAD
BACK SIDE SHREE RENUKA CLOTH STORE
DAVANGERE TOWN -577 001.

...RESPONDENT

(BY SRI S G RAJENDRA REDDY, ADVOCATE)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO PASS
AN ORDER TRANSFERRING THE CASE IN CR.MISC.No.172/2021
PENDING ON THE FILE OF 4TH ADDITIONAL CIVIL JUDGE
(JR.DIV.) AND JMFC, COURT AT DAVANAGERE TO THE FILE OF

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NC: 2024:KHC:370
CRL.P No. 5355 of 2023

CIVIL JUDGE (JN.DIV.) AND JMFC BHADRAVATHI COURT FOR
DISPOSAL IN ACCORDANCE WITH LAW.

THIS PETITION, COMING ON FOR ADMISSION THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed praying to transfer Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere to the file of the Civil Judge (Jr.Div) and JMFC Court, Bhadravathi.

2. Heard, learned counsel for the petitioner and learned counsel for the respondent.
3. Respondent has initiated proceedings against the petitioner and his parents under Protection of Women from Domestic Violence Act, 2005 in Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere. Transfer is sought on the ground that there is an untoward incident occurred on 12.03.2023 in the Court premises and the petitioner has lodged a complaint against advocates and case has been registered NC: 2024:KHC:370 in Davangere Extension Police Station in Crime No.94/2023 for the offences punishable under sections 143, 147, 504, 323, 355, 506, 149 of IPC, wherein advocates of Davangere have been arrayed as accused. The petitioner is having threat to appear in the Court at Davangere since he has filed complaint against advocates. As there is threat to the petitioner to appear in the Court at Davanagere. On being asked to learned counsel for the respondent, he submits that case can be transferred to the Court which is convenient to both parties.
5. Learned counsel for the petitioner and learned counsel for respondents both submits that case can be transferred to the Principal Civil Judge and JMFC, Harihar.
6. In view of the above, the following ORDER The petition is allowed. The Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere is ordered to be transferred to the NC: 2024:KHC:370 Principal Civil Judge and JMFC, Harihar for disposal of the case in accordance with law.

The petitioner is directed to bear the travel and other expenses of the respondent in attending the

Court at Davangere i.e., Rs.600/- per hearing on the dates on which the respondent appears in the said case.

Sd/-

JUDGE DSP

Sri Narendra Dattathri vs State Of Karnataka on 20 June, 2024

Author: K.Somashekar

Bench: K.Somashekar

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

PRESENT
THE HON'BLE MR JUSTICE K.SOMASHEKAR
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA
WRIT PETITION HABEAS CORPUS NO. 27 OF 2024

BETWEEN:

SRI. NARENDRA DATTAHRI
S/O LATE DATTAHRI SRINGERI GANESH BHAT,
AGED ABOUT 45 YEARS,
R/AT NO.7110, BRETON DRIVE
CHARLOTTE, NORTH CAROLINA-28210
UNITED STATES OF AMERICA.

...PETITIONER
(BY SRI. BHAT SHANKAR SHIVARAM, ADVOCATE)

AND:

Digitally signed by
AASEEFA PARVEEN
Location: HIGH
COURT OF
KARNATAKA

1. STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF HOME AFFAIRS,
VIDHANA SOUDHA, DR.AMBEDKAR VEEDHI,
BENGALURU-560001.
2. COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE,
INFANTRY ROAD, BENGALURU-560001
3. POLICE SUB - INSPECTOR
WOMEN POLICE STATION-I,

BASAVANAGUDI,
WEST ZONE, BENGALURU-560070

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

4. SMT. SHWETHA NAGESH RAO,
W/O NARENDRA DATTATHRI,
AGED ABOUT 43 YEARS,
R/AT NO.158/2A/20, 'LALITA RAM NIVAS'
3RD CROSS, CANARA BANK COLONY,
CHIKKALASANDRA, UTTARAHALLI MAIN ROAD,
BENGALURU-560061.
ALSO R/AT NO.12/4,
TARapore OFFICERS COLONY,
ST. JOHNS ROAD, PULKESHINAGAR,
BANGALORE NORTH,
FRAZER TOWN, BANGALORE-560005.

. . . RESPONDENTS

(BY SRI. B.A. BELLIAPPA, SPP A/W
SRI. M.V. ANOOP KUMAR, HCGP FOR R1-R3;
SRI. C.V. SRINIVASA, ADVOCATE FOR R4)

THIS WRIT PETITION HABEAS CORPUS IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF HABEAS CORPUS IN FAVOUR OF THE PETITIONER DIRECTING THE RESPONDENTS NO.1 TO 4 TO PRODUCE THE CHILD BY NAME ADVAITH AGASHE FROM ILLEGAL DETENTION OF RESPONDENT NO.4 AND HAND OVER SON TO THE PETITIONER TO FACILITATE REPATRIATION OF MINOR SON TO COUNTRY OF ORIGIN IN OBEDIENCE OF THE DIRECTION OF COMPETENT COURT VIDE ANNEXURES-G AND H ORDER DATED 02.04.2022 PASSED IN CASE NO.18-CVD-11642(JPC) ON THE FILE OF MECKLENBURG COUNTRY, NORTH CAROLINA, USA.

THIS PETITION, COMING ON FOR ORDERS,
THIS DAY, DR. CHILLAKUR SUMALATHA, J., MADE
THE FOLLOWING:

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

ORDER

Heard Sri.Bhat Shankar Shivaram, learned counsel for the writ petitioner as well as Sri.C.V.Srinivasa, learned counsel who is representing respondent No.4.

2. This writ petition is filed seeking a writ in the nature of habeas corpus directing respondents No.1 to 4 to produce the child by name Advaith Agashe from illegal detention of 4th respondent and hand over the said child to the petitioner facilitating repatriation of the said child to the country of origin.

3. The crux of the case as could be perceived from material available on record is that, 4th respondent is the wife of the writ petitioner. Out of their lawful wedlock, they gave birth to the child by name Advaith Agashe on 27.08.2012. The said child is a Canadian Citizen by birth.

4. Arguing in respect of merits of the matter, learned counsel Sri.Bhat Shankar Shivaram submits that the said child was kidnapped by 4th respondent. She brought him to India from United States of America without the knowledge of the writ petitioner, who is none other than the father of the child. Learned counsel states that there is an order from American NC: 2024:KHC:22056-DB Court that the child should be in the custody of the writ petitioner. Learned counsel further submits that the mother is keeping the child under her custody illegally which amounts to illegal detention and as the father is the lawful custodian of the child in the light of the order passed by the Court of United States of America, the child should be ordered to be removed from the custody of 4th respondent - mother and should be handed over to the writ petitioner, so that he can take the child to the United States of America.

5. Submitting that the child cannot be allowed to stay in India and indeed the Courts in India are required to honour and obey the orders passed by the other countries, learned counsel for the writ petitioner relied upon the decision of Hon'ble Supreme Court in the case of Mrs.Elizabeth Dinshaw Vs. Arvand M.Dinshaw and Another decided on 11.11.1986. In the said case the Hon'ble Supreme Court while dealing with the custody of a minor child observed as follows:

" It is the duty of all Courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing. The Courts in all countries ought to be careful not to do anything to encourage the tendency of NC: 2024:KHC:22056-DB sudden and unauthorised removal of children from one country to another. This substitution of self-help for due process of law in this field can only harm the interests of the wards generally, and a judge should pay due regard to the orders of the proper foreign Court unless he is satisfied beyond reasonable doubt that to do so would inflict serious harm on the child."

6. Learned counsel submits that it is the writ petitioner who has to take care of the child. Only because of the disputes that arose between the writ petitioner and 4th respondent, 4th respondent without the knowledge of the writ petitioner has brought the child to India and she has not allowed the writ petitioner to meet or converse with the child and therefore the present writ petition is filed.

7. Vehemently opposing the submission thus made, learned counsel for 4th respondent Sri.C.V.Srinivasa submits that the writ petitioner has disobeyed the laws of India. He stays at America though several proceedings are pending against him. Learned counsel submits that 4th respondent gave a complaint to police against the writ petitioner and his family NC: 2024:KHC:22056-DB members by which a criminal case was registered and after due investigation, charge sheet was also filed.

8. Learned counsel submits that a non-bailable warrant was issued against the writ petitioner and the same is pending, but without coming to India and submitting himself to the jurisdiction of Court of law in India, the writ petitioner is visiting several countries. He has thus disobeyed the laws of India and therefore the writ petitioner has no right to claim that the Courts of India are bound by the laws and the orders passed by the other countries in his favour. Learned counsel further submits that a domestic violence case is pending against the writ petitioner and equally, a petition filed for the custody of the child under Guardians and Wards Act is also pending. Learned counsel further contends that as the custody of the child is in question before the competent court which is dealing under the provisions of Guardians and Wards Act, the writ petitioner cannot through this writ petition seek for custody of the child and therefore, the writ petition is liable to be dismissed under this count alone.

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9. This Court through the orders dated 04.06.2024 directed 4th respondent to appear before this Court along with the child and equally the writ petitioner to keep present before the Court physically.

10. Though 4th respondent is present before this Court and has also produced the child in question, the writ petitioner for the reasons best known has not attended before this Court. Learned counsel for the writ petitioner Sri.Bhat Shankar Shivaram submits that, as the writ petitioner is suffering from ill-health, he could not physically appear before this Court. No satisfactory reason is given as to why he cannot at-least appear before this Court by utilizing video conferencing facility. Also no proof is produced in respect of the alleged ill health of writ petitioner. That apart, a perusal of record goes to show that the writ petitioner is well aware that the child is under the custody of 4th respondent and continues to be under her care. The 4th respondent is none other than the mother of the child in question. The writ petitioner has produced a copy of the Aadhar Card in respect of the child. A meticulous perusal of the copy of the Aadhar Card reveals that the writ petitioner is also well NC: 2024:KHC:22056-DB aware of the address particulars of 4th respondent as well as the child in question.

11. Having considered all these aspects, we are of the considered view that filing of this writ petition is nothing but abuse of the process of the Court. When proceedings before the competent court under the Guardians and Wards Act are pending in respect of the custody of the child the writ petitioner is not expected to knock the doors of this Court seeking very similar relief. Therefore, this Court holds that the writ petition wholly lacks merits and deserves dismissal.

Accordingly, the writ petition stands dismissed.

Sd/-

JUDGE Sd/-

JUDGE AP CT:TSM

Sri P Prakash vs Smt K Ashwini on 11 June, 2024

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NC: 2024:KHC:20632-DB
MFA No.7711/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT
THE HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.7711/2017 (MC)
BETWEEN:

SRI. P. PRAKASH
S/O P. CHANNANGOUDA
AGED ABOUT 32 YEARS
OCC: UN-EMPLOYEE
R/O. N. CHEERANAHALLI VILLAGE
HARAPANAHALLI TALUK
DAVANAGERE DIST.

...APPELLANT
(BY SRI. JAGADEESH GOUD PATIL, ADV.,)

Digitally signed AND:
by RUPA V
Location: HIGH SMT. K. ASHWINI
COURT OF W/O P. PRAKASH
KARNATAKA AGED ABOUT 30 YEARS
OCC: STAFF NURSE
R/O. N. CHEERANAHALLI VILLAGE
HARAPANAHALLI TALUK
DAVANAGERE DIST 583212.

...RESPONDENT
(BY SRI. S.G. RAJENDRA REDDY, ADV.,)

THIS MFA IS FILED U/S.28(1) OF THE HINDU MARRIAGE ACT,
AGAINST THE JUDGMENT AND DECREE DATED:27.07.2017 PASSED
IN MC NO.18/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC, HARAPANAHALLI, DISMISSING THE PETITION FILED
U/S.13(1)(1A) OF HINDU MARRIAGE ACT.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
VIJAYKUMAR A. PATIL J., DELIVERED THE FOLLOWING:

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NC: 2024:KHC:20632-DB

JUDGMENT

Challenging the judgment and decree of rejection of the petition filed by the appellant for dissolution of marriage in M.C.No.18/2015 dated 27.07.2017 on the file of Sr. Civil Judge and JMFC, Harapanahalli, the present appeal is preferred.

2. The appellant was the petitioner and the respondent in this appeal was the respondent before the Trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The marriage of the petitioner and the respondent was solemnized on 15.02.2008 at Nandigudi Temple, Harihara as per Hindu rites. Their marriage was registered on 06.03.2008 before the Registrar of Marriage, Harapanahalli. It is averred that the parents and relatives of the respondent were not in good terms with the parents of the petitioner. Hence, without the consent of the petitioner's parents, marriage was performed and none of the family members of the petitioner attended the marriage. It is further averred that the petitioner and the respondent lived together at the respondent's house for two months. At that time, respondent NC: 2024:KHC:20632-DB and her parents threatened the petitioner to take share of the property from his father. However, there was already a partition between the father of the petitioner and his brothers as per the judgment and decree in O.S.No.91/2008. Knowing fully well about the partition, the respondent and her parents insisted the petitioner for fresh partition of the joint family property. Due to the same, the relationship between the petitioner and the respondent became strained.

4. It is also averred that the respondent filed a complaint before the CDPO, Harapanahlli, under the provisions of the Protection of Women from Domestic Violence Act, 2005 against the petitioner, his aged old parents, brothers and pregnant sister. In the said complaint, a false accusation was made against the petitioner and his family members with regard to receiving Rs.70,000/- in cash, Rs.20,000/- worth of utensils, 5 thola gold and cloth worth Rs.5,000/- by way of dowry. The said complaint was referred to the jurisdictional Court and after enquiry, the jurisdictional Court passed an order directing the petitioner to pay Rs.1,000/- p.m. as maintenance to the respondent. The respondent initiated NC: 2024:KHC:20632-DB proceedings for recovery of the maintenance amount and the petitioner paid the maintenance amount regularly.

5. It is pleaded that the petitioner and the respondent led the married life only for a period of two months between 15.02.2008 and 20.04.2008. On 20.04.2008, the respondent and his brother started quarrelling with the petitioner, insisted him for fresh partition and drove him out of the respondent's house. Thereafter, the petitioner started living alone and he filed M.C.No.15/2009 for declaration that the marriage solemnized between him and the respondent is null and void. The said proceeding, after contest, was dismissed.

6. It is further pleaded that the respondent was a quarrelsome women, used to abuse the petitioner in filthy language, used to assault him along with her brother on the streets and on two occasions, the brother of the respondent attempted to murder him. Therefore, the petitioner lodged a complaint against the respondent before the police. The police officer and elders of the village compromised the matter. However, the respondent was not ready to obey the advice of the elders and used to humiliate the petitioner before the NC: 2024:KHC:20632-DB neighbours. It is also pleaded that the respondent used to hurl the utensils on the petitioner and threaten him with dire consequences and caused cruelty. After the filing of M.C.No.15/2009 as a counter blast, the respondent filed a false criminal case against him. The petitioner and the respondent are living separately for the last more than 7 years and thereafter, without conjugal relationship. Hence, seeks to grant a decree of divorce.

7. The respondent entered appearance and filed objections by denying the allegation of cruelty. It is specifically denied that the respondent had insisted for partition of the petitioner's property. It is averred that the proceedings under the provisions of the Protection of Women from Domestic Violence Act were initiated as the petitioner failed to discharge his duty and neglected her. It is further averred that after the marriage, the respondent lived with the petitioner in the matrimonial house and led married life for about 3 to 4 months. The parents of the petitioner, his brothers and other family members started abusing the respondent in filthy language. They subjected her to physical and mental cruelty, used to lock her in the room and attempted to set fire by pouring kerosene NC: 2024:KHC:20632-DB on her body. It is also averred that the petitioner and his family members intimidated her of her life and forced her to give suo-motto divorce. It is pleaded that the petitioner and his family members used to torture her everyday and ultimately drove her out of the matrimonial home with a direction to bring Rs.2,00,000/- dowry otherwise they would not allow her to continue the married life. It is further pleaded that the respondent is ready to lead married life with the petitioner by discharging her marital obligation. However, the petitioner, at the instigation of his family members, unsuccessfully filed M.C.No.15/2009 and after dismissal of the same on 11.08.2010 on merits, on the same grounds the present petition is filed. Hence, she sought dismissal of the petition.

8. The Trial Court recorded the evidence of the parties. The petitioner examined himself as PW-1 and produced 13 documents which were marked as Exs.P-1 to P-13. The respondent examined herself as RW-1, two other witnesses as RW-2 and RW-3 and produced 3 documents which were marked as Exs.R-1 to R-3. The Trial Court has recorded the finding that the petitioner failed to prove the grounds of cruelty as well as desertion and dismissed the petition filed by the petitioner.

NC: 2024:KHC:20632-DB Challenging the said judgment and decree, the above appeal is filed by the petitioner-husband.

9. Sri.Jagadeesh Goud Patil, learned counsel for the appellant, reiterating the grounds of appeal, referring to the evidence and judgment submits that the Trial Court has failed to appreciate the evidence judiciously and apply the law properly. He submits that impugned judgment is erroneous and liable to be reversed.

10. Per contra, Sri.S.G.Rajendra Reddy, learned counsel for the respondent supports the impugned judgment of the Trial Court and submits that the allegations of cruelty are very vague and no evidence is placed to substantiate the allegations of cruelty. Hence, the Trial Court is justified in dismissing the petition. He submits that the petitioner himself was guilty of cruelty and negligence which was evident from records.

11. Considering the submissions of both sides and examining the materials on record, the point that arises for consideration is "Whether the impugned judgment and decree of the Trial Court calls for any interference"?

NC: 2024:KHC:20632-DB ANALYSIS Reg. cruelty:

12. There is no dispute with regard to the solemnization of marriage on 15.02.2008. It is not in dispute that the petitioner and the respondent led married life approximately for a period of 2 to 4 months. It is also not in dispute that the petitioner filed M.C.No.15/2009 seeking a decree of judicial separation which came to be dismissed on 11.08.2010. A perusal of the finding recorded by the Trial Court in M.C.No.15/2009 indicates that the grounds urged in the said petition were similar to that of the present grounds. In addition to present allegations, it was alleged that the petitioner had refused to marry the respondent in the absence of his parents, but the parents of the respondent, under the life threat, took him to Nandigudi Temple, Harihara, performed the marriage and to legalise the said marriage, took him to the Registrar of Marriages, Harapanahalli and got the marriage registered. If the pleadings in the present petition and the allegations made in M.C.No.15/2009 are read together, it can be fairly inferred that the petitioner is taking different stand in both the proceedings. The petitioner has specifically pleaded in the previous proceedings that he was not willing to marry the NC: 2024:KHC:20632-DB respondent and he has been living separately from the respondent from the date of marriage. However, quite contrary to the said stand, he has pleaded in the present petition that the respondent caused cruelty and she stayed in the matrimonial home only for a period of two months. Hence, he is seeking the decree of divorce which clearly goes to show that the petitioner has not approached the Court with clean hands.

13. The affidavit evidence of PW-1 / petitioner is nothing but reiteration of the averments made in the petition. On perusal of the petition averments and the affidavit of PW-1, it is evident that the respondent led married life for a period of two months and thereafter, started residing separately. The allegation that the respondent and her family members used to insist him for partition of the property is not supported by any cogent and acceptable evidence. The respondent, in her statement of objections, specifically denied the assertion of the petitioner. With regard to the allegations of respondent quarreling with the petitioner and his family members and using filthy language against them are nothing but self-serving statements of the petitioner. The petitioner has not examined any independent witness to substantiate the allegation of

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NC: 2024:KHC:20632-DB cruelty. It is alleged that the respondent and her brother on two occasions assaulted the petitioner and therefore, he has filed police complaint against the

respondent which has resulted in compromise. Admittedly, the petitioner has not produced the copies of the complaints nor examined any panchas who have compromised the dispute between the parties and in the absence of any such evidence, the assertion of assault by the respondent and her brother cannot be accepted. The allegations of cruelty are very vague, stray instances of cruelty are pleaded and reiterated in the evidence by the petitioner. Those allegations cannot be termed as cruelty of such degree of enormity making it perilous to the petitioner to lead the married life with the respondent. The Trial Court, considering the evidence available on record, has come to the conclusion that the petitioner failed to prove the grounds of cruelty. The said finding is neither perverse nor contrary to the evidence on record calling for interference in the present appeal. Reg. desertion:

14. The petitioner pleaded that the respondent has led married life for a period of two months. It is averred that the petitioner was driven out of the respondent's house on

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NC: 2024:KHC:20632-DB 20.04.2008 and from that date, he is living alone. The said pleading has been reiterated in the evidence of PW-1 with regard to desertion. Section 13(1)(i-b) of the Hindu Marriage Act, 1955 mandates that one party should desert the another party for a continuous period of not less than two years immediately preceding the presentation of the petition. The word 'desertion' has been explained in Section 13(1) Explanation which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. In the instant case, there is no material whatsoever on record to come to the conclusion that the respondent has deserted the petitioner voluntarily and without any justifiable cause. The respondent, in her statement of objection as well as in evidence has clearly stated that the petitioner was not willing to continue the married life with the respondent and they had started torturing the respondent which had resulted in respondent residing at her parent's house. Petitioner himself says that in D.V. Act proceedings Court has awarded maintenance. That goes to show that he

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NC: 2024:KHC:20632-DB was held guilty of abuse. The desertion in the context of matrimonial dispute should be gathered based on the pleading and evidence available on record. If a party claims that another party has deserted, the same is required to be proved by proper pleading supported with cogent and acceptable evidence. The petitioner is required to prove the factum of separation by proving the intention of another party to bring the cohabitation permanently to an end, 'animus deserendi'. In the instant case, the petitioner has failed to prove the desertion as a ground to dissolve the marriage. Hence, on this ground also appeal fails.

15. For the aforementioned reasons, we proceed to pass the following:

ORDER The appeal is devoid of merits and is dismissed.

Sd/-

JUDGE Sd/-

JUDGE RV

Sri Pankaj Singh Sengar vs Smt Priyanka Singh on 5 April, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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Reserved on : 18.01.2024

Pronounced on : 05.04.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48615 OF 2013 (GM - FC)

C/W

WRIT PETITION No.41607 OF 2017 (GM - FC)

WRIT PETITION No.41608 OF 2017 (GM - FC)

IN WRIT PETITION No.48615 OF 2013

BETWEEN:

SMT.PRIYANKA SINGH
W/O PANKAJ SINGH SENGAR
AGED ABOUT 32 YEARS
R/AT B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... PETITIONER

(BY SMT.RADHIKA M., ADVOCATE)

AND:

SRI.PANKAJ SINGH SENGAR
S/O R.S.SENGAR

2

AGED ABOUT 34 YEARS

R/AT. B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SRI B.V.KRISHNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.9.2013 PASSED ON THE MEMO FILED BY THE PETITIONER ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGLAORE IN M.C. NO.3014/2012 VIDE ANN-G; MODIFY THE ORDER DATED 30.11.2012 AND ENHANCE THE MAINTENANCE AMOUNT FROM RS.15,000/- TO RS.70,000/- PER MONTH BY ALLOWING I.A. NO.3 IN M.C. NO.3014/2012 ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGALORE VIDE ANN-D.

IN WRIT PETITION No.41607 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI R.S.SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FRIEND

3

SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 282 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN M.C.3014/2012 ON THE FILE OF THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DATED 10.08.2017 ON I.A.8 IN M.C.3014/2012 PASSED BY THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A BY ISSUING A WRIT IN THE NATURE OF CERTIORARI AND ALLOW THE SAID APPLICATION I.A.8.

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IN WRIT PETITION No.41608 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI. R.S. SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FIREND
SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO. A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 208 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLATNO.1405,

L & T SOUTH CITY APARTMENTS,
AREKERE MICO LAYOUT,
OFF BANNERGHATTA ROAD,
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

5

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN EX.C.NO.152/2015 ON THE FILE OF THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DTD.10.8.2017 IN EX.C.NO.152/2015 PASSED BY THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These cases arise out of M.C.No.3014 of 2012 pending before the Principal Family Court, Bangalore and parties to the lis in all these cases are common; they are husband and wife. Therefore, they are taken up together and considered by this common order. For the sake of convenience, the parties are referred to as per their ranking in the matrimonial case i.e., husband is referred to as the petitioner and wife as the respondent. Writ Petition No.48615 of 2013 is preferred by the wife.

2. The facts, in brief, germane are as follows:-

The petitioner and the respondent got married on 16-05-2011 and have a daughter born from the wedlock. The marriage between the two appears to have floundered and on the floundering of the said relationship, the husband prefers M.C.No.3014 of 2012 seeking annulment of marriage that had taken place between the two. The allegation of the husband was that the wife had left the matrimonial house on her own volition. The issue in the lis does not concern merit of the claim of the husband seeking annulment of marriage or defence of the wife. In the said petition, the wife files an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties on the application, grants the wife interim maintenance of `15,000/- per month in terms of its order dated 30-11-2012. The wife then files a memo of calculation before the concerned Court on 08-07-2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejects the memo. The rejection of the

memo forms the subject matter of challenge in Writ Petition No.48615 of 2013 coupled with a prayer to enhance interim maintenance. During the pendency of the said petition, the husband/petitioner suffers a stroke resulting in 75% disability, due to which, he had resigned from his work and on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiates execution petition seeking execution of the order of maintenance. The concerned Court, in terms of its order dated 05-02-2016, directs the father of the husband to pay arrears of maintenance. When that is not adhered to, a fine levy warrant and arrest warrant are issued against the husband on 12-07-2017 and 10-08-2017. This forms the subject in Writ Petition No.41608 of 2017. The other writ petition in W.P.No.41607 of 2017 is again preferred by the husband calling in question the order passed on 10-08-2017 on I.A.No.8 in M.C.No.3014 of 2012 whereby the application filed by the husband to recall the order of maintenance comes to be rejected. Therefore, Writ Petition No.41607 of 2017 is preferred by the husband challenging the rejection of I.A.No.8 seeking recall of the order granting maintenance and Writ Petition No.41608 of 2017 challenges the order of issuing fine levy warrant and arrest against the husband.

3. Heard Sri B.V.Krishna, learned counsel appearing for the husband/petitioner and Smt M. Radhika, learned counsel appearing for the wife/respondent.
4. The learned counsel appearing for the wife/respondent would vehemently contend that the husband/petitioner has abandoned the wife at the time when she was carrying the child. She has maintained herself all along and the husband has refused to maintain either the wife or the child, and therefore, seeks appropriate order enhancing grant of maintenance.
5. Per-contra, the learned counsel appearing for the husband/petitioner would contend that maintenance today is a dream to be paid by the husband as he has suffered disability of 75% which does not get him any job. He is no longer an able bodied person to search for job and maintain the wife and the child.
6. In reply the counsel for the wife/respondent would submit that the father of the petitioner has several properties. Therefore, the father could maintain the wife and the child of the petitioner and they cannot be left in the lurch. Both the petitioner and the respondent have placed reliance upon certain judgments which would bear consideration in the course of the order.
7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.
8. The afore-narrated facts are not in dispute. The relationship between the two and the birth of girl child from the wedlock are all a matter of record. The genesis of the issue is on the husband filing a petition seeking annulment of marriage in M.C.No.3014 of 2012 in which the wife/respondent files an application seeking interim maintenance. The Court considering the application and submissions of both the parties, grants interim maintenance by the following order:

".....

4. Point No.1 & 2:- Main petition is of the husband seeking divorce from the respondent on the ground of cruelty (U/sec. 13 (1) (la) of the Hindu Marriage Act). On service of notice of this petition, the respondent appeared before this Court personally on 10/10/2012 and later filed application U/sec. 13 of the Family Courts Act on the adjourned date and she is represented by advocate. On the same date, this IA has been filed by the respondent. The matter came to be posted for objections to IA No.3 as well as for the parties to go to the Bangalore Mediation Centre for the purpose of mediation. However, it is submitted by the advocate for the respondent that there is urgency for the respondent for disposal of IA No.3 as she is in advanced stage of pregnancy. Advocate for the applicant/respondent has addressed oral arguments. Advocate for the opponent/petitioner apart from addressing oral arguments has filed written arguments also on this IA No.3. Opponent/petitioner has produced some documents along with the memo. The applicant/respondent admits her relationship with the opponent/petitioner as his wife. (For the sake of convenience, the petitioner is referred to as the husband and the respondent is referred to as the wife). The husband admits that the wife is in advanced stage of pregnancy. The documents and other records produced by the husband go to show that the wife has filed police complaints against the husband etc... Some of the records have been produced by the husband to show that he has concern about the health of the wife and he has spent substantial amount for her medical expenses etc., The husband has stated that his monthly salary as per the Salary Slip is Rs.76, 371/- As per the husband, he has the other liabilities to look after his aged parents and has to make payment of rent amount in respect of independent residences for the wife as well as his parents. Now it will suffice, for the sake of arriving at conclusion as to what amount the wife is entitled to interim maintenance, to take into consideration the salary income of the husband. Looking to the status of the husband and the status of the wife that was enjoyed by her during her stay with the husband, I am of the opinion that Rs.15,000/- per month will be the reasonable amount for maintenance of the wife pending final disposal of the main petition Rs. 10,000/- appears to be the reasonable amount towards litigation expenses. For the foregoing reasons, I proceed to pass the following:-

ORDER IA No. 3 of the respondent is partly allowed.

The petitioner/husband is hereby directed to pay to the respondent/wife Rs.15,000/-per month towards interim maintenance pending final disposal of the main petition. The petitioner/husband is further directed to pay the Rs.10,000/- towards litigation expenses."

(Emphasis added) The Court grants the wife `15,000/- per month as interim maintenance and `10,000/- towards one time litigation expenses. This is not paid by the husband. The wife/respondent files a memo of calculation before the concerned Court seeking huge arrears from the hands of the respondent. This comes to be rejected by the concerned Court in terms of the order dated 20-09-2013. This has driven the wife/respondent to this Court in Writ Petition No.48615 of 2013. The issue now would be, whether the husband should be directed to pay maintenance to the wife and the child, to which certain facts need to be noticed.

9. The husband was employed in a company by name Textron India Private Limited. During his employment, the petitioner suffers a stroke and the disability is identified as Chronic Neurological Condition and is assessed at 75%. The assessment is by NIMHANS, Bangalore and the husband is also issued a disability certificate based upon the assessment by NIMHANS. The disability certificate reads as follows:

"Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India Disability Certificate Issuing Medical Authority, Bengaluru Urban, Karnataka PHOTO Certificate No.: KA1891219770276312 Date: 20/01/2023 This is to certify that I/we have carefully examined Shri Pankaj Singh Sengar, Son of Shri Rajendra Singh Sengar, Date of Birth 24/09/1977, Age 45, Male, Registration No. 2918/00000/2207/1531923, resident of House No. Flat No. L1-116, Sowparnika Phase 1. Sarjapura - Attibele Road, Bidarguppe - 562107, Sub District Anekal, District Bengaluru Urban. State / UT Karnataka, whose photograph is affixed above, and I am/we are satisfied that:

(A) He is a case of Chronic Neurological Conditions (B) The diagnosis in his case is Right Hemiparesis with cognitive dysfunction and Aphasia (C) He has 75%(in figure) Seventy Five percent(in words) Permanent Disability in relation to his RIGHT UPPER LIMB, RIGHT LOWER LIMB as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

The applicant has submitted the following document(s) as proof of residence:

Nature of Document(s): Registered Sale/Lease Agreement Signature/Thumb Impression of the Person with Disability Sd/-

Signatory of notified Medical Authority Member(s)"

The condition of the husband is a Chronic Neurological disability with cognitive dysfunction and is said that he is unable to walk even.

After suffering the said disability the petitioner submits his resignation to his employment. The letter of resignation reads as follows:

"Name: Pankaj Sengar Employee ID: 1000840188 Sub: Resignation acceptance Letter This refers to the email dated 22 May 2015, sent by Priyanka Sengar (your sister) on your behalf, resigning from the services of the company and the subsequent discussions we had over phone.

We hereby inform you that your resignation, under reference, has been accepted by the management with regret and you will be relieved from the services of the

company with effect from 31 May 2015.

We draw your attention to your continuing obligation of confidentiality with respect to any proprietary and confidential information of Textron that you may have had access to during the course of your employment. As a part of the separation process, we are attaching the exit documents. Please sign on these documents and send it back to the undersigned as soon as possible to expedite the full & final and relieving process.

We thank you for your valuable contributions and wish you a speedy recovery. Do contact us in future to explore the job opportunities. Get well soon.

Wish you all the very best.

Thanking You, Yours sincerely, For Textron India Private Limited"

(Emphasis added) The petitioner is relieved from service of the Company with effect from 31-05-2015. Prior to that on account of continuous absence of the husband, he was placed on loss of pay from 16-12-2013 till 09-07-2014. This communication reads as follows:

"To Whom It May Concern Dear Sir/Madam, This is to certify that Pankaj Singh Sengar is an employee at Textron India Private Limited.

Date of Joining	:	14th March 2011
Designation	:	Technical Specialist
Employee ID	:	1000840188

Employee is on loss of pay from 16th December 2013 till date and the letter has been issued for insurance purpose.

Yours sincerely.

For Textron India Private Limited Sd/-

Reshma B S Sr.Executive - HR Ops"

(Emphasis added) Therefore, on and from the husband suffering disability he has remained outside employment. The State Government has issued a disability certificate as is required in law. Government of India has also issued such certificate which is quoted supra. Therefore, it is an admitted fact that the husband suffers from a disability which is to the tune of 75% and takes away all the badge of the husband to be an "able bodied man" as disability is admitted.

10. The husband files an application seeking recall of the order granting interim maintenance. This is rejected on the plea of the wife/respondent that the husband/petitioner has recovered from illness

and now he is an able bodied person. This is the challenge in Writ Petition No.41607 of 2017. The wife does not stop at that. She initiated execution petition against the husband contending that the father of the husband had to pay her the maintenance and to the child. The husband is projected to be represented by the father and accordingly execution is preferred. In the execution petition, the Court issues fine levy warrant against the husband for non-payment of maintenance. Therefore, all these petitions are before this Court.

11. The only issue that false for consideration is, "Whether the husband is to be directed to pay maintenance and the order passed by the concerned Court directing issuance of arrest warrant or fine levy warrant should be sustained?"

12. What is the status of the wife/respondent is also necessary to be noticed. The admitted qualification of the wife is that she has Masters in Computer Application and Pre-MCA completion. The wife is working as a teacher in several schools. The resume of the wife insofar as it is relevant reads as follows:

"....

Project Work

Completed Six months project on "Personal Information Management system"

Role: Initial role was for initial understanding of the project along with coding of the project for complete behavior and integrating it with "BAAN ERP".

Technology Used: Project coding specification:

Front End:	Oracle Developer.
Backend server:	DB2
Intermediate Development:	JSP

Education Qualification

Masters of Computer Application with 67.18%. Certificate in computing i.e.: CIC with 60%. Technical Proficiency:

Languages	:	C++/JAVA/Oracle
Web Technologies	:	JSP/HTML
Operating Systems	:	Windows 98/2000/XP
Databases	:	SQL Server
Middleware	:	Apache/Tomcat

Employment History

- Official training of six month from INDIAN TELEPHONE INDUSTRY (I.T.I MANKAPUR)

Pre MCA Completion:

- Teaching Experience as a Computer Instructor

from KENDRIYAVIDYALAYA I.T.I Mankapur.

- Teaching as a Computer Teacher in Fatima Convent School Mankapur.
- Teaching as a Computer Teacher in Fatima Convent School GONDA.

....."

The situation now is, the wife is qualified and is even working and earning certain amount of money. Whether that would be enough or not is a different circumstance. The issue is whether the husband can be directed to pay maintenance.

13. On a few occasions, this Court directed the parties to appear before the mediation centre and settle the issue. Every time it was only the father of the husband appears and the husband did not. Therefore, the husband also was directed to be present. Photographs of the husband are produced before Court. The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an able bodied man to search for employment and pay maintenance to maintain the wife and the child.

14. The learned counsel for the wife/respondent projects several grievances against the husband. It is the submission of the wife/respondent that the husband is a fraud and he has fraudulently projected himself to be a disabled man inter alia. These would all be in the realm of evidence. This Court, for the present, would go by the disability certificate issued by both Government of India and State Government which is based upon the assessment of disability by NIMHANS. If the husband is incapable of earning due to disability, it is highly ununderstandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.

15. It becomes germane to notice the judgment of the Apex Court in the case of RAJNESH v. NEHA¹ which dealt with the grant of maintenance and its forms and hues. The Apex Court at paragraph 93 has held as follows:

"(e) Serious Disability and ill health:

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."

(Emphasis supplied) The Apex Court observes that serious disability or ill-health of a spouse who would require constant care and recurring expenditure (2021) 2 SCC 324 would also be a relevant consideration while quantifying maintenance. The High Court of Calcutta in a similar circumstance in a judgment rendered in INDRANIL ADHIKARI v. ARUNIMA ADHIKARY² has held as follows:

"....

12. That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.

13. The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.

14. The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.

15. The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.

16. In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.

17. The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears that the petitioner/husband has been diagnosed with 60% 2023 SCC OnLine Cal 3318 permanent disability (left foot) and he cannot travel with assistance of escort.

18. But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.

19. An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.

20. The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.

21. The disability certificate has been issued on 27.10.2018.
 22. Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.
 23. But any prayer for modification etc. in such proceedings due to subsequent developments and change in circumstances is to be made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court in such proceedings (Rajnesh v. Neha, (2021) 2 SCC 324).
 24. The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside."
- (Emphasis supplied) The Calcutta High Court was considering the disability of a husband at 60%. What was challenged by the husband was a condition to pay 25% of the arrears in the execution case. The said condition was set aside on the ground that the husband is no longer an able bodied man.
16. It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled. As the disability happened in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.
 17. The learned counsel for the wife/respondent has placed on record a memo of calculation. The memo depicts that as on today, the maintenance that is to be paid by the husband is a whopping sum of Rs.19,04,000/- . The duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled. If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability. By no means he can be depicted to be an able bodied man to direct that he should search for such avocation that would enable him to maintain the wife and the child. The wife is earning, even if not earning is completely qualified and is capable of earning. Therefore, the orders that are now sought to be passed by the wife cannot even be considered to be passed.
 18. It is projected that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance. This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and for the last 10 years there is no maintenance

paid; obviously the wife who is qualified is working and earning. Insofar as grant of maintenance to the child is concerned, I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild's necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected. The fine levy arrest warrant issued by the executing Court/Trial Court requires to be set aside. Likewise the application filed for recalling the order dated 30-11-2012 is to be allowed in part, up to the date when the husband/petitioner suffered disability i.e., December, 2013. Therefore, till the said date the wife/respondent is entitled to such maintenance, which the father of the husband/petitioner can pay, not to the wife but to the child.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.48615 of 2013 stands rejected however, observing that arrears of maintenance till the date of disability, shall be fulfilled by the father of the husband/petitioner.
- (ii) Writ Petition No.41607 of 2017 is allowed in part, again restricting the order of maintenance to the date on which the husband/petitioner suffers disability.
- (iii) Writ Petition No.41608 of 2017 is allowed. The order passed in Execution Petition No.152 of 2015 in terms of its order dated 10-08-2017 stands quashed.

Consequently, pending applications, if any, also stand disposed.

Sd/-

JUDGE bkp CT:MJ

Sri Sunil Kumar H S vs Smt Prathima Y V on 2 July, 2024

-1-

NC: 2024:KHC:24613-DB
MFA No.1172/2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL No.1172/2018 (GW)

BETWEEN:

SRI SUNIL KUMAR H S
AGED ABOUT 44 YEARS
S/O SHIVANANDA S.R.
R/AT NO.503, E.W.S.
13TH CROSS, KUVEMPU NAGAR
HASSAN - 573 201

...APPELLANT

(BY SRI P.P.HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

SMT PRATHIMA Y V

Digitally
signed by K S DIVORCED WIFE OF SUNIL KUMAR H.S.
RENUKAMBA AGED ABOUT 38 YEARS
Location: ASSISTANT TEACHER
High Court of GOVT. P.U.COLLEGE (HIGH SCHOOL)
Karnataka CHAANNAITHODY, VAMADAPADAVU POST
BANTWAL TALUK
D.K.DISTRICT - 574 324 ...RESPONDENT

(BY SRI SANJEEV RAO.S., ADVOCATE [ABSENT])

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 47(A) OF THE GUARDIANS & WARDS ACT, 1890 PRAYING

TO SET ASIDE THE JUDGMENT AND DECREE DATED 07.11.2017
PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, HASSAN IN
G & W.NO.02/2015 DISMISSING THE PETITION FILED UNDER
SECTION 12 OF THE GUARDIAN ANDWARDS ACT.

-2-

NC: 2024:KHC:24613-DB
MFA No.1172/2018

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR
FURTHER HEARING, THIS DAY, K.S.MUDAGAL.J, DELIVERED THE
FOLLOWING:

JUDGMENT

Challenging dismissal of his petition under Section 12 of the Guardian and Wards Act, 1890 ('G & W Act' for short) for custody of his son Rohan, the petitioner in G & W.No.2/2015 on the file of the Principal Judge, Family Court, Hassan has preferred this appeal.

2. The appellant was the petitioner and the respondent was the respondent in G & W.No.2/2015. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The petitioner and the respondent are Hindus and governed by Hindu Laws. Their marriage was solemnized on 07.05.2006 at Dharmasthala. In their conjugal life, on 02.01.2008, the couple are blessed with son Rohan. There were some disturbances in the marriage. The couple filed M.C.No.2/2015 before the Senior Civil Judge & JMFC, Bantwal under Section 13B of the Hindu Marriage Act, 1955 ('the Act' for short) seeking dissolution of the marriage by mutual NC: 2024:KHC:24613-DB consent. However, due to differences, they did not reach consensus. Therefore, the said petition was withdrawn.

4. Before that M.C.No.49/2014 was filed by the respondent against the petitioner seeking divorce on the ground of cruelty. On hearing the parties, the petition was allowed on 01.06.2017. The respondent had also filed the petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short) in Crl.Misc.No.1021/2014.

5. The petitioner and the respondent are working. The petitioner filed G & W No.2/2015 alleging that the respondent has illicit relationship with one Girish Ithal. For that reason, she has deserted him. He contended that the respondent is working as Teacher in a school which is situated 40 kilometers away from her residence. In her absence, the child will be unmonitored and that may affect the welfare of the child. He further claimed that he is residing with his parents, financially well off and the child's interest will be better protected in his custody. Therefore he sought custody of the child.

NC: 2024:KHC:24613-DB

6. The respondent contested the petition denying the allegations made against her. She contended that the petitioner himself was an abuser, which forced her to stay separately and initiate proceedings against him under DV Act and for divorce on the ground of cruelty. She seeks dismissal of the petition.

7. In support of his case, the petitioner got examined himself as PW.1 and got marked Exs.P1 to P27. The respondent was examined as RW.1 and on her behalf, Exs.R1 to R8 were marked.

8. The Trial Court on hearing the parties, by the impugned judgment and order dismissed the petition holding that the allegations of the respondent leading adulterous life was not proved. The Trial Court further held that the couple are financially independent. The Trial Court appreciating the evidence found and on interaction with child found that the child is spending its time with both, his father and mother, though he stays with his mother. The Trial Court further held that the petitioner has migrated to Chennai for pursuing higher studies and his parents are aged. Therefore the child NC: 2024:KHC:24613-DB continuing in the custody of the mother serves the welfare of the child and ultimately dismissed the petition.

9. Sri P.P.Hegde, learned Senior Counsel appearing for Sri Venkatesh Somareddi, learned Counsel on record for the appellant/petitioner submits that the child is now aged 16½ years and he is in PUC which is a crucial period. He further submits that the petitioner is meeting the educational expenses of the child. He submits that though the trial Court observed in the body of the judgment that the petitioner is enjoying the visitation rights, the same is not reflected in the final order and the petitioner will be satisfied if specific order is passed for visitation rights.

10. The respondent though served did not turn up. Sri Sanjeev Rao.S., learned Counsel though undertook to appear on her behalf, subsequently he failed to appear.

11. The records show that custody of the child was sought on the ground that the respondent mother is leading adulterous life, therefore it is injurious for the child to continue with the custody of the mother. The respondent filed M.C.No.49/2014 against the petitioner for decree of divorce on the ground that petitioner is making unfounded and false NC: 2024:KHC:24613-DB allegations of adultery and that amounts to cruelty. Ex.P27 the certified copy of the judgment in M.C.No.49/2014 passed by the Principal Senior Civil Judge and J.M.F.C., Bantwal, D.K. shows that the said Court accepting her contention granted decree of divorce in her favour.

12. Further Ex.P26 the certified copy of the order dated 08.05.2017 in Crl.M.C.No.1021/2014 passed by the Principal Senior Civil Judge and J.M.F.C., Bantwal, D.K. shows that the respondent herein filed the said case under Section 12 of the DV Act against the petitioner alleging that he subjected her to domestic violence suspecting her fidelity and failed and neglected to maintain her and her son etc. The said Court partly allowed Crl.M.C.No.1021/2014 restraining the petitioner from subjecting her to domestic violence and awarded Rs.4,000/- per month as maintenance to their son Rohan. Those orders have attained finality. Now the child is aged 16½ years. Once he attains majority he can stay with either of the parents of his choice. Further the evidence on record shows that though the petitioner was in Hassan at the time of filing of the petition, subsequently he shifted to Chennai

for pursuing higher studies and his parents were in Hassan. The Trial Court NC: 2024:KHC:24613-DB took that aspect also into consideration and rejected the petition.

13. Moreover, the petition was filed in the year 2015. Now ten years have elapsed and the parents of the petitioner by this time should have advanced in age. Taking into consideration all these aspects, the Trial Court was justified in holding that continuation of the custody of the child with the mother serves welfare of the child. However, the Trial Court though observed that the petitioner is enjoying the visitation rights and the child is happy in the company of both parents, did not pass any orders regarding visitation rights. Therefore the order requires to be modified only to that extent. The appeal deserves to be allowed in part only to that extent. Hence the following:

ORDER The appeal is partly allowed. The impugned judgment and order dated 07.11.2017 in G & W.No.2/2015 passed by the Principal Judge, Family Court, Hassan so far it relates to rejection of the petition for permanent custody of the child is confirmed.

It is further directed that the petitioner is entitled to temporary custody of the ward Rohan during weekly holidays NC: 2024:KHC:24613-DB and half part of the vacations subject to the consent of both the parties and without disturbing his academics.

No order as to costs.

In view of disposal of the appeal, pending IAs stood disposed of.

Sd/-

JUDGE Sd/-

JUDGE KSR

Sri XXXX vs State Of Karnataka on 28 June, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

1

Reserved on :28.05.2024

Pronounced on :28.06.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1803 OF 2023

BETWEEN:

SRI. XXXXXXXXXX

... PETITIONER

(BY SRI C.V.SRINIVASA, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY STATION HOUSE OFFICER
BASAVANAGUDI WOMEN P.S.,
BENGALURU - 560 070
REPRESENTED BY
LEARNED PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

2 . SMT. XXXXXXXXXX

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R-1;
SMT.XXXXXX, R-2 IN-PERSON)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
C.C.NO.19072/2022 ON THE FILE OF THE HONBLE XXXVIITH ADDL.
CHIEF METROPOLITAN MAGISTRATE, BANGALORE REGISTERED
AGAINST THE PETITIONERS ARISING OUT OF CRIME NO.35/2022
REGISTERED AT THE FIRST RESPONDENT POLICE STATION FOR
THE OFFENCES P/U/S 498A INDIAN PENAL CODE AND U/S 4 OF
DOWRY PROHIBITION ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 28.05.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate at Bangalore arising out of Crime No.35 of 2022 registered for offences punishable under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('the Act' for short).

2. Facts adumbrated are as follows:-

The 2nd respondent/wife is the complainant and the petitioner/husband is accused No.1. The two get married on 29-05-2020. After about two months, the petitioner had to get back to United States of America as his H1B visa was to expire on 19-07-2020. Therefore, the petitioner leaves India to USA. It is the averment in the petition that on 21-01-2021, the complainant leaves the matrimonial house and then began to stay in a relatives' house. The petitioner further avers in the petition that efforts were made by the petitioner to get a visa so that the complainant could travel to USA. The first appointment that the petitioner took was on 13-10-2020. The complainant does not go to visa office for processing visa formalities. The second appointment was taken on 02-03-2021; again the complainant misses the same. On 07-05-2021 the 3rd appointment was taken. The complainant again misses the same. The 4th appointment was taken on 24-05-2021, the complainant misses the same too. The 5th appointment then emerges and visa is granted to the complainant on 22-09-2021.

When the relationship between the two, according to the averment, turned irreconcilable, the petitioner/husband comes to India and files a petition seeking divorce in M.C.No. 6838 of 2021 before the Family Court and later, on 22-12-2021 also files a complaint before the jurisdictional Police against the wife alleging several acts. It is then on 03-02-2022 the impugned complaint is registered by the 2nd respondent/wife against the petitioner which becomes a crime in Crime No.35 of 2022 for offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Act. The Police, after investigation, file a charge sheet before the concerned Court. The concerned Court, on the charge sheet, takes cognizance of the offences against the petitioner for the aforesaid offences and registers C.C. No. 19072 of 2022 in terms of its order dated 14-06-2022. It is the registration of criminal case is what has driven the petitioner to this Court in the subject petition.

3. Heard Sri C V Srinivasa, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Smt xxxx, respondent No.2 in person.

4. The learned counsel for the petitioner would contend that the petitioner and the complainant get to know each other through an online matrimony website, as the petitioner was residing in USA and the complainant in Bangalore. After approval of both the families, the two get married. The petitioner travels to USA for renewal of visa purposes. Five attempts were made by the petitioner by seeking appointments to get the complainant to USA.

It is his averment that she refused to go to USA. The learned counsel would vehemently submit that the wife has left no stone unturned in painting the petitioner black by getting him tested for all the parts of the body, which all went in vain, as the petitioner was clean and had suffered no problem. The wife was never intending to live with the husband and all that she wanted is his money. All efforts of conciliation failed between the two, as the wife demanded `3/- crores in lieu of settlement. He would submit that nowhere in the complaint there is any indication of demand of dowry. Therefore, Section 498A of the IPC or even Sections 3 and 4 of the Act can spring into action in the case at hand is his emphatic submission.

5. Per contra, the 2nd complainant/wife who appears in person vehemently contends that the petitioner/husband suffers from Sexually Transmitted Disease ('STD'). It is her case that right from the beginning he had that problem and unless he would rectify it, she would not join him. Even before this court the complainant is candid in submitting that his rectal parts have some boils and, therefore, it is a case of some problem and the complainant projects it to be contagious. It is her further submission that the petitioner had blocked all channels of communication once he went to USA and he was never interested in taking her with him to USA.

Even when she suffered an accident, the petitioner did not bother to get her treated or take her to USA later. He only comes back and registers a petition seeking annulment of marriage before the Family Court and tries to register a crime against the complainant.

It is then the complainant had to resist by registering the impugned complaint. It is her submission that the husband earns more than `2/- crores annually and is not wanting to part with the amount on settlement. On all these counts the respondent/wife in person would submit that the husband should face trial for what he has done and it is for him to come out clean therein. The interim order that is subsisting should be vacated or the petition itself be dismissed is her submission.

6. I have given my anxious consideration to the submissions made by the learned counsel for petitioner and the 2nd respondent in person and have perused the material on record.

7. The factum of marriage between the petitioner and the 2nd respondent is a matter of record. Immediately after the marriage the husband travelling to USA for the purpose of renewal of H1B visa is again a matter of record. The relationship between the two appears to have turned sore. The husband comes to the shores of the nation and seeks to register a petition seeking annulment of marriage before the Family Court on 23-12-2021 in M.C.No.6838 of 2021. Prior to registration of the said petition, a complaint before the Commissioner of Police is also said to have been filed by the husband against the complainant/wife. The complaint is appended as document No.2 to the I.A. seeking vacation of the interim order.

The complaint is said to be closed after the statement of the wife.

Then emerges the impugned complaint. Since the entire issue is now triggered from the impugned complaint, I deem it appropriate to notice the said complaint. It reads:

"Women's Police Station 3806, Thyagaraja Nagar, Banashankari, Bengaluru, Karnataka 560070 Respected Sir/Madam, I, XXXXX(Age-30 years) and residing at-Address: #171, Srinivasan layout, BSK 3rd stage T.G.layout, 4th cross road, Near VBB Bakery Ittamatadu, Bangalore 560085 Contact-9900110806.

I have married in 29-May-2020 to XXXX, age 33 years, Son of RaghavendraBhat B(father) and SukanyaBhat(mother), who belongs to Address: # 72/1, 3rd floor, 8th main road, Dattatreyanagar, Hosakerehalli, Banashankari 3rd stage, Bangalore -560085. Contact-9686932594. He is working in cummins Inc- USA as Product Engineer-Address:Cummins Inc, Box 3005, Columbus, IN 47202-3005, United States.

XXXX had come to India for marriage on March -2020. Last visit was Dec-2019 for marriage discussions (3 months back). He told Due to covid first wave lockdown he visited early for marriage. There was an immediate lockdown after his visit (first wave). He was in quarantine in Bangalore - Hosakerehalli (dad's House). The marriage took place on May 29th 2020 at my grandmother's house Mundya-Ishwaramangala (Initially it was arranged in Hanumagirisabhabhavan-Ishwaramangala, Because of lockdown it was closed). We have arranged their stay for the night a day before the marriage in Hanumagiri-

Ishwaramangala lodge.

After the marriage, we were staying in XXX's uncle- his dad's younger brother's house in udupi, There was a reception on June 3rd 2020 at UdupikodavoorShankaranarayana Temple, It's almost a week from the date of marriage. They have told because of covid temple is closed and waiting for the date. So it's late.

XXX behavioural changes- Initially he was pretending to be normal, in the first night, we were tired & both decided not to go sexual. First night was arranged in Udupi-at XXX's uncles house by them. From the second day, we were asked to stay in a room which had not proper latch to lock thereby not giving for privacy which is usually expected by the newly-wed couples. His behavior was neutral, not bothered about the privacy. He was accepting the situations without any second options, never thought of having a private stay in lodge. (That time lodges were open could have done the first night and the stay there if he is really wanting). He was not taking any responsibility. He was telling there is no option. I have given my anxious consideration to the submissions made by the learned Senior Counsel and other respective learned counsel and have perused the material on record. questioned, whether he is interested in me and also suggested to go for a mutual consent divorce if interested in the marriage, to which no response was forthcoming. I have observed that he has no interest to engage in sexual intercourse and trying to hide the problems. I have seen some infections on his genital areas and that resembles an STD (sexually transmitted disease).

I am hereby lodging a complaint against my Husband, for causing-Mental Harassment, dishonesty concealed his medical condition, & cheating and breaching the trust of me and had an Intention to insult and abuse me mentally & financially.

Details as below-

1. After the marriage, we stayed for 2 weeks in XXX's uncle's house. There was a naming ceremony of uncle's grandson June 10th 2020. Soon after that owing to the constant requests, he finally decided to leave Udupi and shift to Bangalore and while doing so, he constantly blamed me for this action.

2. On reaching Bangalore, he continued to do work from home, his US timing was different, he used to work till 3 am at night and will be up at 11am in the morning. He was giving that excuse, telling me it's all my fault, and it's my drama, which makes him upset everyday & never interest to engage in sexual intercourse from the ver inception of the marriage and has always been able to avoid the same under the pretext of work or some other irrelevant situations marriage ha not been consummated. He was forcing me to enlarge my vagina by fingering by myself (unnatural act). He told the same statement to my mother (Sandhya Rao)

3. XXXX had forcefully made me vacate my rented house where I was staying before marriage while working, and made me stay in his father's house. After shifting there, be again told me to move to Whitefield, telling his dad is not comfortable and no peace. But I was not wishing to move to his father's house where there is no mother in law. It's naturally not easy for any girl.

4. They have also taken the streedhan from me - A pearl gold necklace weighing 8 grams, a green stone gold necklace weighing 10 grams, a long gold chain with pendent weighing 32.510 gram three pairs of gold bangles weighing 74 grams in total, three gold rings totally weighing 11.32 grams and his dad had asked all the savings of me to give to xxx while I leave India. They have made me to leave my job thereby putting me under financial pressure as well. I had been subjected to constant harassment and abuse from xxx and his father when I stayed in their house.

5. I had asked him what made him to get angry with me and let me know if there are any physical problems, for that he got offended and avoided me and decided to leave for America. xxx left India from 40th Day of marriage on July 6th 2020, He was behaving like I did something wrong to him, and he was upset while leaving & there was no proper good bye, there by putting me under immense stress and pain.

6. After that I was trying to get Visa in India to join him, but due to covid it was getting postponed. During this period, he was normal and was talking to me and asking the update on visa.

7. I stayed in his Dad's house for almost 8 months, but I was not comfortable to stay there. I had told xxx that I am planning to shift to rented house. There was no appointments showing for visa and the earliest date was Nov 2021, I had conveyed the same to xxx and told that I will shift to rented house in Jan 2021 and shifted.

8. After Shifting. There was a change in his behavior & initial 5 months he denied to help me financially. Then later on asking multiple times he had agreed to pay 20k as monthly expense till December- 2021. During this time, I had asked him in good faith requested to get himself tested and treated so that we could live as normal couple but he refused that. I told him to visit India to solve things, He had explicitly stated that he will not be coming back to India & won't be having any discussions with elders on the same.

9. I was trying to get visa slots & got on-May-2021, conveyed the same to xxx, but once again it got cancelled due to covid, xxx had shown no interest to book the slots for visa interview. He was angry with me and giving silent treatment for long have asked xxx, to go couple therapy with me. But he was not interested in online session telling there is no time even on weekends. There is no changes has to be made with him. He told he doesn't need a therapy, telling me to go for individual therapy.

10. Me & my brother met with a bike accident in Aug-

2021 and had some face injuries, was admitted to hospital PragathiPuttur along with my Brother, Brother had jaw displacement. I conveyed this to xxx, He was texting me for a day and from the next day there was no response, it was a weekend, His mobile data was off, and he told he had gone for hiking. There was no support from him financially.

11. He was constantly blaming me for not trying to book visa slots. Slots will be immediately booked once its open in India. I have told him to book because of the time difference, it's easy for him to book from US. But he had no interest to book, told me to book on my convenience. I got the slots for

Sep-2021 and conveyed him. He had done all the arrangements for accommodation & flight booking to Kolkata & I got my visa on October 2nd week.

12. Nov-2021 I had communicated with XXX That My relatives are coming to India from US on Dec-2021 and planning to go back on Jan-2022. Since it's the first time for me to travel to the US, my family wants me to go with my relatives. This I have communicated with XXX on whatsapp and it has been delivered to him. After that there is no response from him on any communication channel and there is an internet issue.

My relatives who came to India from US - Indiana in the month Dec-2021, had again approached XXX through a message and phone calls before they come to India. But there was no response from him. He had completely ignored text messages and calls made by me & blocked me.

13. I have approached his dad initially and visited his house with mom to solve this. Even tried contacting his uncle in udupi. But he spoke to us rudely, and told it's all my fault, & I got married for their property and money. The effect was worse.

XXX was blaming for my behavior that I don't know how to behave with others, don't know how to talk and no common sense from the day of marriage. This caused me mental stress and I am trying, come out of that. I had seen he has some Infections that resembles STD (sexually transmitted disease) because of which he is not physical with me and trying to avoid sex.

He made me to leave my job immediately after marriage and made me dependent on him. Now I am living on my savings, since he doesn't support me financially I am suffering from past 1 and half years, because of his unpredictable behavior and negligence. I was not treated as a wife right from the beginning of marriage. He is trying to manipulate every incident & had abused me emotionally, tried to have a control over me which caused depression and self-doubt.

I humbly request you to investigate this matter, protect and help me to come out of this to live life peacefully.

you're sincerely, XXXXXXXX."

A perusal at the complaint would indicate that the complainant laid emphasis upon infections of the husband on his genital areas which resembled as STD. Therefore, the husband is guilty of mental harassment dishonestly concealing his mental condition and breaching the trust of the wife. Minute details of certain allegations are made which are found in the complaint. The crux of the complaint was STD on him, making her leave her job after marriage and therefore, she would be dependent upon him. There is not a single sentence about the petitioner demanding dowry and indulging in cruelty for the purpose of demand of dowry. All the harassments that the complainant narrates are minor skirmishes between the husband and the wife. The Police after investigation file a charge sheet. Column No.17 of the charge sheet reads as follows:

" , ÁA Që ¥À Ú , Ág ÁA ± Á , ÁQë -1 gÀ a Ág ÁA J1 Dg ÉÆ Á | Ai ÁA È Á Ä ß ¢ £ ÁA PÀ : 29 / 05 / 2020 gÀ Az ÁÄ UÀ Äg ÁÄ » jAi ÁA gÀ , Áa ÁÄ Ää Rz Á° è , ÁA YÀ æz ÁAi ÁÄ z ÁAv É F± Áég À a ÁÄ AU Á® UÁ æ a Áii YÀ Äv ÁÆ Úg ÁÄ E° è a ÁÄ z ÁÄ a ÉAi Ái ÁVz ÁÄY a ÁÄ z ÁÄ a ÉAi ÁÄ ° è , ÁA YÀ æz ÁAi ÁÄ z ÁAv É , ÁQë -4 gÀ a Ág ÁÄ J1 Dg ÉÆ Á | UÉ 614 UÁ æ A " É 1/2 i , Áa Ái ÁE ÁÄ UÀ 1/4 ÁE ÁÄß o ÁU ÁÄE , ÁQë -1 gÀ a Áj UÉ 160 UÁ æ A a E ÁB " sÀ gÀ t UÀ 1/4 ÁE ÁÄß PÉ ÁE I ÄÖ a ÁÄ z ÁÄ a ÉAi ÁÄ E ÁÄß a Ái Ár PÉ ÁE n Ög ÁÄ v ÁÜg É . a ÁÄ z ÁÄ a ÉAi Ái Áz Á¢ £ Á J1 Dg ÉÆ Á | a ÁÄ v ÁÄ Ú , ÁQë -1 E s Ág ÁÄ Gq ÁÄ | Ai ÁÄ ° è g ÁÄ a Á J1 Dg ÉÆ Á | Ai ÁÄ a PÀ i Y ÁÄ E Á a ÁÄ E ÁU E ° E ÁE ÁVg ÁÄ v ÁÜg É , ¢ £ ÁA PÀ : 03 / 06 / 2020 gÀ Az ÁÄ Gq ÁÄ | Ai ÁÄ ° è Dg Áv ÁP Áe v E £ Áq E¢ g ÁÄ v ÁÜz E a ÁÄ v ÁÄ Ú Gq ÁÄ | Ai ÁÄ ° è , ÁQë -1 a ÁÄ v ÁÄ Ú J1 Dg ÉÆ Á | Ai ÁÄ a E ÁE z Á® g Áw æ P ÁAi ÁÄ ð P Áe a ÁÄ a ÁE ÁÄß K Y Áð r 1 z ÁÄ Y J1 Dg ÉÆ Á | Ai Ái Á a ÁÄ z ÁE Á MAZ ÁÄ P Ág Át ° E Á 1/2 a E Áz Á® g Áw æ P ÁAi ÁÄ ð P Áe a ÁÄ a ÁE ÁÄß a ÁÄ ÄAz ÁÄ erg ÁÄ v ÁÜg É . 2 a Ág ÁU Á 1/4 ÁE ÁAv Ág Á J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Áf ÁÄß P Ág Áz ÁÄ P E Áq ÁÄ " EAU Á 1/4 ÁE j £ Á v Á a ÁÄ a ÁÄ E ÁU E § Az ÁÄ a Á , Áa ÁVz ÁÄ Y , £ ÁAv Ág Á a ÁC J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág E Ác U E z E E » P Á , ÁA YÀ P Á ð a ÁE ÁÄß o E ÁE A c g ÁÄ a ÁÄ c ® è F « Z Ág Á a ÁE ÁÄß , ÁQë -1 gÀ a Ág ÁÄ s , ÁQë -4 gÀ a Áj UÉ w 1/2 1 z ÁÄ Y j Az Á , ÁQë -4 gÀ a Ág ÁÄ F « Z Ág Á a ÁE ÁÄß J1 Dg ÉÆ Á | Ai ÁÄ E ÁÄß P E Á 1/2 z ÁÄ Y P E Í J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Áj UÉ Ai E ÁE Á x Ai ÁÄ E ÁÄß » V Í P E Á 1/4 Ái ® Á o E Á 1/2 JAz ÁÄ , ÁQë -4 gÀ a Ág Á o Áw Üg Á o E Á 1/2 g ÁÄ v ÁÜg É . J1 Dg ÉÆ Á | U E E ÁVP Á g E ÁE Á U Á « z ÁÄ Y E z ÁE f Á Á B a ÁÄ g E a Ái Á a , ÁQë -1 gÀ a Ág Áf ÁÄß a ÁÄ z ÁÄ a E Ái Ái ÁVg ÁÄ v ÁÜg É . a ÁÄ z ÁÄ a E Ái Ái Áz Á 40 ¢ £ ÁP E Í J1 Dg ÉÆ Á | a ÁY Á , ÁÄ i Ai ÁÄ ÄJ , iJ U E o E ÁE ÁVz ÁÄ Y , ÁQë -1 gÀ a Ág ÁÄ , ÁÄ a Ái Ág ÁÄ 8 wAU Á 1/4 ÁÄ J1 Dg ÉÆ Á | Ai ÁÄ v ÁAz E Ái ÁÄ e E ÁE v E Ái ÁÄ ° è a Á , Áa ÁVz ÁÄ Y £ ÁAv Ág Áz Á° è , ÁQë -1 gÀ a Ág ÁÄ Ai ÁÄ ÄJ , iJ U E o E ÁE ÁU Á ® Á J1 Dg ÉÆ Á | U E n P E Ám i § ÁP i a Ái Áq ÁÄ a ÁAv E o E Á 1/2 z ÁÄ Y Cz ÁP Ái J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Á o Áw Üg Á Eg ÁÄ a Á , E Á « AU ii o Át a ÁE ÁÄ Á B m Áæ f ii Ys Ág i a Ái Ár z Ág E Á P Ág Áz ÁÄ P E Áq ÁÄ o E ÁE ÁU ÁÄ a ÁÄ z ÁV w 1/2 1 g ÁÄ v ÁÜ f E , £ ÁAv Ág Á , ÁQë -1 gÀ a Áj U E C Y ÁW Áv Á a ÁVz ÁÄ Y F « µ ÁAi ÁÄ a ÁE ÁÄß J1 Dg ÉÆ Á | U E w 1/2 1 z Ág ÁÄ , Áo Á J1 Dg ÉÆ Á | " s Ág Áv ÁP Í E § A c g ÁÄ a ÁÄ c ® è o ÁU ÁÄ , ÁQë -1 gÀ a Ág Áf ÁÄß Ai ÁÄ ÄJ , iJ P Ág Áz ÁÄ P E Áq ÁÄ o E ÁE ÁVg ÁÄ a ÁÄ c ® è o ÁU ÁÄ J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Á £ ÁA § g ÁÄ E ÁÄß " Áe P i a Ái Árg ÁÄ v ÁÜg É , F j Áw Ai Ái ÁV , ÁQë -1 gÀ a Áj U E J1 Dg ÉÆ Á | Qg ÁÄ P ÁÄ 1/4 Á x Ár g ÁÄ a ÁÄ z ÁÄ v Á x S Á P Á ® z Á° è ® " s Á Á Áz Á , ÁQë a ÁÄ v ÁÄ Ú , ÁP Áe öö Ázs Ág ÁU Á 1/2 z Áz Á z ÁE q s ÁY Án Ög ÁÄ a ÁÄ z Áj Az Á J1 Dg ÉÆ Á | Ai ÁÄ « g ÁÄ z ÁÄ P Á ® A : 498 (J) L 1 o ÁU ÁÄ 4 r | DP i Ö j Áv Á Á a Ái ÁE Á Á £ Á Á Ái Ái Á ® Ai ÁÄ P E Í z ÁE Áu Ág E ÁÄ Y Áu Á Y Án ÖAi ÁÄ E ÁÄß , Á° è 1 g ÁÄ v ÁÜ . "

A perusal at the summary of the charge sheet would also not indicate any demand of dowry or cruelty on the part of the husband. Prior to filing of the charge sheet by the Police, statements were recorded of the family members of the complainant. The statement of her mother assumes certain significance, relevant portion of which reads as follows:

".....

£ À £ À ß a À Ä U À ¼ À a À Ä z À Ä a É a À i Á q À " É Ä P É A z À Ä " Á æ » à t a À i Á à n æ a É Ä E Ä x A i À i Á z À ° è £ À £ À ß a À Ä U À ¼ À ° É , À g À £ À Ä ß £ E Ä E Ä A z Á - Ä 1 g Ä Ä v É U Ä a É , £ À £ À ß a À Ä U À ¼ À Y É Ä e Y É E - t C f Ä Ä ß ° Ä Ä q Ä Ä U À J P E I ö E Y I Ö a À i Á r g Ä Ä v Ä U Æ E ° Ä Ä q Ä Ä U À £ À v Ä A z È £ À £ À U È Y É Ä Ä E È a À i Á r z À Ä Y £ À £ À ß a À Ä U À ¼ À Ä £ À £ À ß Y É Ä Ä E È £ À A s g À P È E n Ö z À Ä Y ° Ä Ä q Ä Ä U À £ À v Ä A z È £ À £ À U È Y É Ä Ä E È a À i Á r x a À Ä ä o À Ä q Ä Ä V Ä £ À a À Ä U È M | à U E A i À i Á V z À Y ¼ E Ä a À Ä z À Ä a É a À i Á v Ä Ä P Ä v È a À i Á q À ® Ä x a À Ä ä a À Ä £ E U À S g À Ä a À Ä z Á V w ½ 1 g Ä Ä v Ä U g È , £ À A v Ä g À ° Ä Ä q Ä Ä U À a À Ä v Ä Ä U C a À g À , À A s A f ü P Ä g À Ä a À Ä z À Ä a É a À i Á v Ä Ä P Ä v È a À i Á r z À Ä Y a À i Á v Ä Ä P Ä v È A i À Ä ° è o À Ä q Ä Ä U À a À Ä v Ä Ä U C a À g À , À A s A f ü P Ä g À Ä £ À a À Ä U È A i À i Á a À Ä z È Ä a À g À z À Q e u È " E Ä q À a É A z À Ä ° E Ä ½ g Ä Ä v Ä U g È ° Ä U È È A i À i Á a À Ä z È Ä r a À i Á a A q À a À i Á r g À Ä a À Ä f ® è . £ À A v Ä g À f L Ä A P Ä : 29 / 05 / 2020 F ± À e g À a À Ä A U À - i U Á æ a À Ä Y À Ä v Ä È U g À Ä E ° è U Ä Ä g À Ä » j A i À Ä g À , À a À Ä Ä ä R z À ° è , À A Y À æ z Á A i À Ä z À A v È £ À £ À ß a À Ä U À ¼ À Ä X X X X ¼ À £ À Ä ß ° Ä Ä q Ä Ä U À X X X X g À a À j U È P È A I Ä O a À Ä z À Ä a É a À i Á r P È E n Ö g Ä Ä v È U Ä Ä L È , a À Ä z À Ä a É A i À Ä ° è , À A Y À æ z Á A i À Ä z À A v È £ À £ À ß C ½ A i À Ä x U È 6 1 4 U Á æ A " E ½ 1 , A a À i Á L Ä Ä U À ¼ À £ À Ä ß P È E n Ö g Ä Ä v È U Ä Ä L È ° Ä U È È £ À £ À ß a À Ä U À ½ U È 1 6 0 U Á æ A a £ À B z À M q À a É U À ¼ À £ À Ä ß P È E n Ö g Ä Ä v È U Ä Ä L È .

.....£ À £ À ß C ½ A i À Ä Y À æ w c £ À A i À i Á a À Ä z Á z Ä g È Ä E A z À Ä P Á g À t ° E Ä ½ P È E A q À Ä £ À £ À ß a À Ä U À ¼ À e E Ä v È U È z È È » P À , À A Y À P À ð a À i Á q À z À P Á g À t £ À £ À ß a À Ä U À ¼ À Ä £ À £ À U À Y È Ä E È a À i Á r « Z Á g À a À l È À B w ½ 1 z À Y j A z À F « Z Á g À a Á V £ Á f È Ä £ À £ À ß C ½ A i À Ä L È À L È Ä P È Ä ½ z À Y P È I £ À £ À ß C ½ A i À Ä x a À Ä ä a À Ä U À ¼ À A i È Ä È x a P À l f z È | A U À j A U i a À i Á r P È E A q À Ä » V È , À ® Ä ° E Ä ½ J A z À Ä ° E Ä ½ g Ä Ä v Ä U È È , £ À £ À ß a À Ä U À ½ U À È , À ° à E z È È j Ä w ° E Ä ½ g Ä Ä v Ä U È È ° Ä U È È £ À £ À ß C ½ A i À Ä x U È A i À i Á a À Ä z È È È È A V P À g È Ä E U À « z À Ä Y E z À £ È È B a À Ä g È a À i Á a £ À £ À ß C ½ A i À Ä £ À £ À ß a À Ä U À ¼ À £ À Ä È a À Ä z À Ä a É a À i Á r P È E A R g Ä Ä v Ä U È È , a À Ä z À Ä a É A i À i Á z À 4 0 f £ À P I È £ À £ À ß C ½ A i À Ä a Á Y À , À Ä i C a È Ä Ä j P Á U È ° E Ä È V z À Ä Y £ À £ À ß a À Ä U À ½ U È « Á , Á a À i Á r 1 P Á g È z À Ä P È E A q À Ä ° E Ä E U À Ä a À Ä z Á V ° E Ä ½ g Ä Ä v Ä U È È ° Ä U È È £ À £ À ß a À Ä U À ½ U È v À A z È A i À Ä e E Ä v È U È a Á , À a Á V g À Ä a À A v È ° E Ä ½ ° E Ä È V g À Ä v Ä U È È . £ À £ À ß a À Ä U À ¼ À Ä , À Ä a À i Á g À Ä 8 w A U À ¼ À Ä C a À g À a À i Á a À £ À e E Ä v È U È a Á , À a Á V z À Ä Y £ À £ À ß a À Ä U À ¼ À C v È U E ® è z À P Á g À t £ À £ À ß a À Ä U À ¼ À Ä a À i Á a À £ À e E Ä v È U È a Á , À a Á V g À Ä a À z À Ä " E Ä q À a É A z À v À £ B À U À A q À x U È w ½ 1 " E Ä g È a À Ä £ È A i À Ä £ È Ä ß a À i Á r P È E A q À Ä a Á , À a Á V g À Ä v Ä U È È D z À g È £ À £ À ß C ½ A i À Ä £ À £ B À a À Ä U À ½ U È C a À g À v À A z È A i À Ä a E Ä v È U È a Á , À a Á V g À Ä a À A v È M v Ä U A i À Ä a À i Á r g Ä Ä v Ä U È È , £ À A v Ä g À £ À £ À ß a À Ä U À ¼ À Ä C a È Ä Ä j P Á U È ° E Ä E U À ® Ä « Á , Á C Y È è o È A i À Ä a À i Á r « Á , Á a À i Á r 1 P È E A R g Ä Ä v Ä U È È , « Á , Á a À i Á r 1 P È E A q À £ À A v Ä g À £ À £ À ß a À Ä U À ¼ À Ä C ½ A i À Ä x U È Y È Ä E Ä m i n P È Ä m i s Ä p i a À i Á r C a È Ä Ä j P Á U È s g À Ä a À z Á V w ½ 1 z À Ä Y D z À g È £ À £ À ß C ½ A i À Ä £ À £ À ß a À Ä U À ¼ À £ À Ä È C a È Ä Ä j P Á U È P Á g È z À Ä P È E A q À Ä ° E Ä È U À " E Ä P Á z À g È Ä £ À £ À ß a À Ä U À ¼ À , E Ä « A U i i ° A t a À £ À Ä È £ À £ À ß C ½ A i À Ä È S Á v È U È a À U Á ð a À u È a À i Á q À Ä a À A v È M v Ä U A i À Ä a À i Á r g Ä Ä v Ä U È È £ À A v Ä g À £ À £ À ß a À Ä U À ½ U È C Y È W Á v À a À V z À Ä Y F « Z Á g À a À £ À Ä È £ À £ À ß

“EAUÀ¼ÀÄ £À£Àß C½AiÀÄ» UÉ w½¹zÀgÀÄ ,ÀºÀ £À£Àß C½AiÀÄ “EAUÀ¼ÀÆjUÉ §A¢gÀÄªÀÅ¢®è °ÁUÀÆ £À£Àß C½AiÀÄ» UÉ “ÉEVAPÀ ,ÀªÀÄ ,Éå EgÀÄªÀÅzÀjAzà “EAUÀ¼ÀÆjUÉ §»b aQvÉì vÉUÉzÀÄPÉÆAqÀÄ °ÉÆÄUÉÆÄt JAzÀÄ ªÁYÀ ,ÀÄì EşagÀÄ CªÉÄÄjPÁUÉ °ÉÆÄUÀÆt JAzÀÄ °ÉÄ½zÀgÀß ,ÀºÀ £À£Àß C½AiÀÄ “EAUÀ¼ÀÆjUÀÆ §A¢gÀÄªÀÅ¢®è £À£Àß ªÀÄUÀ¼ÀÈÀÄß CªÉÄÄjPÁUÀÆ PÀgÉ¹PÉÆ¹ÀízÀ PÀgÀt £À£Àß ªÀÄUÀ¼ÀÄ £À£Àß C½AiÀÄ» UÉ »ÀªÀÄ £À£Àß£ÀÄß CªÉÄÄjPÁUÉ PÀgÉzÀÄPÉÆAqÀÄ °ÉÆÄUÀ¢zÀYgÉ £À£ÀÄ °ÜUÀ”i ªÀÄÄAzÀÄªÀgÉAiÀÄvÉUÄ£É JAzÀÄ ªÉÄ”i ªÀiÁrzÀÄY £À£Àß C½AiÀÄ ªÁYÀ ,ÀÄì jYÉèöÈ ªÀiÁqÀzÀ PÀgÀt £À£Àß ªÀÄUÀ¼ÀÄ vÀªÀÄä oÁuÉAiÀÄ°è vÀ£Àß UÀAqÀ£À «gÀÄzÀY zÀÄgÀÄ »ÄrgÀÄvÀÛ¹¼É ,£ÀAvÀgÀ £À£Àß C½AiÀÄ £À£Àß ªÀÄUÀ½UÉ rªÉÇÀ ,ið £ÉÆAn ,i PÀ¼ÀÄ»¹gÀÄvÀÛ£É .

F jÄwAiÀiÁV £À£Àß ªÀÄUÀ½UÉ CªÀ¼À UÀAqÀ QgÀÄPÀÄ¼ÀªÀ£ÀÄß »ÄrgÀÄvÀÛgÉ .”

(Emphasis added) The mother herself in her statement speaks that at the time of discussions about the marriage, the parents of the petitioner and the petitioner had clearly indicated that they do not want any dowry and they are not demanding anything. The same goes with the statements of others. The statement of one Karthik Rao, brother of the complainant is as follows:

“£À£ÀÄ ªÉÄ”É w½¹zÀ «¼À ,ÀzÀ°è ,ÀA ,ÀgÀ ,ÀªÉÄÄvÀªÀV ªÀ ,ÀªÁVzÀÄY ,PÀlјAUi ©¹£É ,i ªÀiÁrPÉÆArgÀÄvÉÛÄ£É ,£ÀªÀÄä vÀAzÉ vÀÄUÉ £ÀªÀÄ EşagÀÄ ªÀÄPÀl½zÀÄY vÀªÀÄä oÁuÉAiÀÄ°è zÀÄgÀÄ »ÄrgÀÄªÀ ²æÀªÀÄw XXXX gÀªÀgÀÄ £À£Àß ,ÀéAvÀ CPAÌ .

£À£Àß CPAÌ£À «zÀª”sÀª ,À ªÀÄÄVzÀ ªÉÄ”É “EAUÀ¼ÀÆj£À°è PÉ®,À ªÀiÁqÀÄwÛÄgÀÄªÀUÀ £À£Àß CPAÌ»UÉ ªÀÄzÀÄªÉ ªÀiÁqÀ “ÉPÉAzÀÄ “Àæ»ät ªÀÄÄnæªÉÆÄ»AiÀiÁzÀ°è £À£Àß CPAÌ£À °É ,ÀgÀ£ÀÄß £ÉÆÄAzÀ¬Ä¹gÀÄvÉÀÛ ªÉ ,£ÀAvÀgÀzÀ°è £À£Àß CPAÌ£À YÉÆYÉ”i C£ÀÄß °ÀÄqÀÄUÀ JPÉiöÈYiÖ ªÀiÁrgÀÄvÀÛ£É °ÁUÀÆ °ÀÄqÀÄUÀ£À vÀAzÉ £À£Àß CPAÌ»UÉ YÉÆÄ£À ªÀiÁrzÀÄY £À£Àß CPAÌ £À£Àß vÀÄ£À YÉÆÄ£À £ÀÀsÀ PÉÆnÖzÀÄY °ÀÄqÀÄUÀ£À vÀAzÉ £À£Àß vÀÄUÉ YÉÆÄ£À ªÀiÁr ªÀÄä °ÀÄqÀÄV £ÀªÀÄUÉ M|àUÉAiÀiÁVzÀY¹¼É ,ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉ ªÀiÁqÀ®À ªÀÄä ªÀÄ£ÉUÉ §gÀÄ ªÀÄzÀV w½¹gÀÄvÀÛgÉ ,£ÀAvÀgÀ ªÀÄqÀÄUÀ ªÀÄvÀÄÛ CªÀgÀ ,AA§A¢üPÀgÀÄ £ÀªÀÄä ªÀÄ£ÉUÉ ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉUÉ §A¢zÀÄY £ÀªÀÄä ,AA§A¢üPÀgÀÄ ªÀÄvÀÄÛ ªÀÄqÀÄUÀ£À ,AA§A¢üPÀgÀÄ £ÀªÀÄä ªÀÄ£ÉAiÀÄ°è ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉ ªÀiÁrzÀÄY ªÀiÁvÀÄPÀvÉAiÀÄ°è ªÀÄqÀÄUÀ ªÀÄvÀÄÛ CªÀgÀ ,AA§A¢üPÀgÀÄ £ÀªÀÄUÉ AiÀiÁªÀÄzÉÀ ªÀgÀzÀQëuÉ “ÉÄqÀªÉzÀÄ °ÉÄ½gÀÄvÀÛgÉ °ÁUÀÆ AiÀiÁªÀÄzÉÀ rªÀiÁªÀqÀ ªÀiÁrgÀÄªÀÅ¢®è .¢£ÄAPÀ:29/05/2020 F±ÀégÀ ªÀÄAUÀ”i UÀæªÀÄ YÀÄvÀÆÛgÀÄ E°è UÀÄgÀÄ »jAiÀÄgÀ ,ÀªÀÄÄäRzÀ°è ,ÀAYÀæzÀAiÀÄzÀAvÉ PÉÆÄ«qÀ EzÀÄYzÀYjAzÀ ,ÀgÀ¼ÀªÀV £À£Àß CPAÌ XXXX¹¼À£ÀÄß °ÀÄqÀÄUÀ XXXX gÀªÀjuÉ PÉÆlÄÖ ªÀÄzÀÄªÉ ªÀiÁrPÉÆnÖgÀÄvÉÛÄ£É ,ªÀÄzÀÄªÉAiÀÄ°è ,ÀAYÀæzÀAiÀÄzÀAvÉ

£À£Àß "sÁªÀ¤UÉ 614 UÁæA "É½í , ÁªÀiÁ£ÀÄUÀ½À£ÀÄß PÉÆnÖgÀÄvÉÛÄ£É
ºÁUÀÆ £À£Àß ªÀÄUÀ½UÉ 160 UÁæA a£ÀßzÀ MqÀªÉUÀ½À£ÀÄß
PÉÆnÖgÀÄvÉÛÄ£É."

(Emphasis added) What is given to the complainant, according to the complainant's tradition, is 614 grams of silver and 160 grams of gold, not as demand but as a tradition of her family which at best be said to be 'Stridhana'. Such statements galore. If the statements recorded of the mother and the brother of the complainant, the complaint, the charge sheet and summary of the charge sheet are red in tandem, what would unmistakably emerge is that, no demand for dowry was made and no cruelty that would become ingredients of Section 498A of the IPC would get attracted in the case at hand. Section 498A reads as follows:

"498-A. 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 purposes 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."

(Emphasis supplied) Section 498A has two circumstances, which can draw an accused into its web. Husband or relative of husband of a woman subjecting her to cruelty which is likely to drive the woman to suicide or the harassment should be such that they would coerce the woman for meeting any unlawful demand for any property or valuable security, and on failure to fulfill the demand, indulge in cruelty. If the contents of the complaint, summary of the charge and the statements are considered on the bedrock of necessary ingredients of Section 498A of the IPC, the allegation of the offence would tumble down like a pack of cards, as, nowhere it is indicative, of the fact that there is dowry harassment and cruelty by the husband or the members of the family of the petitioner. This Court, entertaining the petition grants an interim order of stay on 01-09- 2023. The same is subsisting even today. The complainant has filed application seeking vacation of the interim order. It is germane to notice the affidavit filed by the respondent/complainant for the said purpose. It reads as follows:

"1. "I state that I am the Respondent No. 2 in the above case. I am, conversant with the facts and circumstances of the above case.

2. I state that I am the wife of Petitioner No.1 and Petitioner No.1 from the 40th day of the marriage have been living in USA and never bothered to take me with him. He has abandoned & cheated me immediately after the marriage.

3. I state that the Petitioner No.1 was never interested to engage in sexual intercourse from the very inception of the marriage. So, the marriage is not consummated. I suspect that the Petitioner No.1 is suffering from HPV infection (Sexually transmitted disease) and I have seen some rashes in his buttock. When I questioned the Petitioner No.1 as to what the infection was, the Petitioner No.1 got offended and avoided me and decided to leave for America and blamed and abused me for the unfortunate situation thereby putting me under immense stress and pain.

4. I state that the Petitioner No.1 is working in USA on H1B visa while I got my H4-Dependent visa. On several occasions, I had requested the Petitioner No.1 to make the travel arrangements, so that I can join him in USA. But the Petitioner No.1 was not reachable and blocked me in all communication channels. So, as a last resort to reach him I had sent emails to the Petitioner No.1. In the said email I had clearly mentioned what I have been going through and asked him to respond and also inform me about the travel plans, but I never got any response to any of my emails from the Petitioner No.1. The said conduct of the Petitioner No.1 after making, my tie knot and now is purposely avoiding me for no reasons and have clearly done so only with the purpose of harassing me and has left the companionship without any means. The copy of the emails sent to the Petitioner No.1 on 05/12/2021 is produced herewith as Document No.1.

5. I state that I am unable to bear the torture & abuse inflicted upon me by the Petitioner No.1. He asked me to transfer all my savings to his bank account through his father while I stayed in his father's house in hosakerehalli, so after that he can take me to USA and tried to abuse me financially. Petitioner No.1 had already taken the Stridhan from me against my will and made me to leave my job and thereby economically abusing me and putting under extensive financial pressure as well. I was subject to constant harassment and abuse by my father-in-

law and eventually made to leave my matrimonial home by the Petitioner No.1 in collusion with his father. I have lodged a police complaint against Petitioner No.1 under section 498 IPC on 25/01/2022.

6. I state that to the shock and dismay of me, I received a summons from the court to appear on 30.03.2022 with respect to a DIVORCE petition filed by the Petitioner No.1 through GPA and got a call from police on 26/03/2022, false police complaint was lodged against me. As I mentioned in the Email (Document No.1), the Petitioner No.1 was expecting me to take legal recourse against him and in order to take the upper hand in legal proceedings and harass me, the Petitioner No.1 got filed a false complaint against me and FIR has not been registered against me as the complainant

did not have any substance. The RTI copy of the NCR and My statement is enclosed as Document No. 2.

7. I state that the Petitioner No.1 has absolutely no love warmth or affection for me, and never bothered to care for me. I met with a bike accident in the month of Aug 2021 and was severely injured and was admitted to hospital. I was injured badly and also had some face abrasions and when I communicated this to the Petitioner No.1, he completely neglected, switched off his mobile on weekends, and denied to help financially. He did not lend any moral or financial support as a responsible husband would ordinarily do. His behavior has been very depressing to me, and it has affected my career and health. The copy of the pictures of the injuries incurred on me and hospital bills are enclosed Document No.3.

8. I state that the I had suffered restlessly in the hands of the Petitioner No.1, My marriage is completely ruined although I made efforts to save the marriage, and this has put me to great suffering, pain, tension and loss. I had undergone cruelty, harassment and torture during my matrimonial life with the Petitioner No.1 and it has affected me both mentally and physically.

9. I submit that if the above application is not allowed, I will be put to great hardship, loss and inconvenience, on the other hand no hardship and injury would be caused to the Petitioner No.1."

(Emphasis added) The application seeking vacation of the interim order appends a mail to the husband. The mail dated 05-12-2021 reads as follows:

"Sun, Dec 5. 2021 at 5:59 PM Hi xxx,, I have been trying to contact you on whatsapp but it seems the internet is disconnected, messages undelivered. Let me know the issue. So contacting you here.

As communicated, in the what's app my relatives are coming to India on Dec 2nd week-2021 and planning to leave on Jan 1st 2022.

Let me know if you want me to come with them. If not, communicate what your plans are.

I have been waiting to contact you from so long. But there is no response.

I am still contacting you after going through many abuse from your family.

-you had forcefully made me vacate my rented house where I was staying before marriage while working, and made me stay in your father's house. After shifting there, you again told me to move to Whitefiled, telling your dad is not comfortable and no peace. If this is the case, you could have told me before vacating my rented

house.

-You and your dad had taken the gold which you gave as a gift at the time of marriage-Streedhan. That time you have also asked me for my gold. I refused to give mine. After multiple discussions you told me to give the gold which you gifted me. I have agreed to that and it is with you.

- You are not interested in sex and avoiding that from the day of marriage. You have some infections on your butt and back. You started avoiding me after asking what it is. Marriage is still not consummated.

You are telling me it's all my fault, and it's my drama, which makes you upset everyday. I have recorded the conversation before you fly back to the US, which covers everything. I had gone through emotional abuse in the first month of marriage itself.

-Your dad was giving me verbal abuse and had misbehaved with me. And this happened in front of you but you still told me to stay there. I was not OK to move to your father's house where there is no mother in law. It's naturally not easy for any girl.

-he was commenting on my stuff, telling me how to behave. I was not comfortable coming out of the room. Most of the time, I was inside my room. For that also he scolded me for not talking to him.

-So I thought let me take a rented house. So I did in the month of Jan 2021, I have told you, there is a minimum 6 months I have to stay there which means Jan - June 2021 initial 5 months you denied to help me financially. Then later on asking multiple times you have agreed to pay 20k as monthly expense till December-2021.

-My visa was getting cancelled everytime. But in the month of Aug-21 limited slots are getting opened. I met with a bike accident in Aug-2021, it was not possible to book slots at that time. I was able to get the slots for Sep-2021 and got a visa on Oct-2021.

Since it's the first time for me to travel to the US, my family wants me to come with my relatives, This I have communicated with you on whatsapp and it has been delivered to you. After that there is no response from you on any communication channel and there is an internet issue.

If you want to communicate anything, please do that here. I have to consider you are not interested in me coming there if you are not responding.

If so, I will cancel all my plans to come to the US since I have approached elders and they are not taking any responsibilities- including your father.

From next year it will be a fresh start, I can wait till December- 2021, still if I am not getting any response from you, I will take the legal proceedings in India.

Regards, xxxx Mob-9900110806"

(Emphasis added) The mail appears to be the foundation for registering the impugned complaint. The husband after receipt of the mail files a petition for divorce in M.C.No.6838 of 2021 on 23-12-2021. Notice is issued by the concerned Court and said the notice is received by the complainant. It is then the aforesaid complaint emerges for the aforesaid offences. It becomes germane to notice the grievance of the 2nd respondent with regard to the problem of the husband.

8. The learned counsel for the petitioner submits that every time the petitioner was accused of suffering from STD. In the aforesaid affidavit, it is clearly indicated by the wife that the petitioner is suffering from HPV infection as he has some rashes on his buttock. The petitioner gets himself tested at the Victoria Hospital and several hospitals. The Hepatitis B test is undergone and the report reads as follows:

"SEROLOGY & IMMUNOLOGY HEPATITIS B SURFACE ANTIGEN (HBSAG)
Sample Collected On:11-APR-23 12.05.21 PM Certified On:11-APR-23 01.23.54 PM
Result: The given sample is Negative Method: RAPID CARD TEST
(IMMUNOCHROMATOGRAPHIC ASSAY) HBsAg"

HIV test is also done on 30-04-2023 which shows it to be non-

reactive. The report is as follows:

"Integrated Counselling & Testing Centre (ICTC) No. 7655 HIV TEST REPORT
FORM Name: Surname ----- Middle Name B. First Name xxx
GOSAICTCKABL01521 Gender: M 33 Years PID # 03260 Lab ID # 03260 Date and
Time blood drawn 11/4/23 (DD/MM/YY) 12.50 P.M(HH:MM) Test Details:

Specimen type used for testing: Serum / Plasm / Whole Blood Date and Time
specimen tested 11/4/23 (DD/MM/YY) 2PM(HH:MM) Note:

- Column 2 and 3 to be filled by only when HIV 1 & 2 antibody discriminatory test(s) used
- No cells have to be left blank, indicate as NA where not applicable.

Column 1	Column 2	Column 3	Column 4
Name of HIV Test Kit	Reactive/Non Reactive (R/NR) for	Reactive/Non Reactive (R/NR) for HIV-2	Reactive/Non Reactive (R/NR) for

HIV-1 Antibodies	Antibodies	HIV Antibodies
Test I combaids		NON REACTIVE
Test II		
Test III"		

VDRL test also was done, the report of which is as follows:

"Name :MR.XXX Bill/IP No. :BMJHG/23-24/OPB276 Age & Gender : 33 Years, Male
Consultant :Dr. ER DOCTOR Name UHID No :BMJHG000037462 Report Date
:11/04/2023 8:04 pm Time Class OPD Sample :11/04/2023 7:28 pm Collection Date
Time Test Name Patient Value Reference Value Unit VDRL MICROBIOLOGY
NEGATIVE"

Since the wife went on complaining that the petitioner has HPV, he gets it tested in the USA. The report of HPV is as follows:

"CUMMINS LIVE WELL CENTER CUMMINS LIVEWELL CENTER 806 JACKSON
STREET COLUMBUS IN 47201-6264 812-748-3412 October 9, 2023 XXXXX 3781
Sitka Circle Apt #1135 Columbus IN 47201 Concerning Mr. Bhat:

XXX was seen in office.

History and Physical Exam was done.

XXX has no physical signs. And no history of concern. for HPV or any other infection on body.

There is no test available for testing HPV in males. Diagnosis is almost exclusively done by physical findings (when there are findings.) There are none in this case.

Quote from N.C.B.I (National Institute for Biomedical Technology). >"No HPV test for men has been approved by the FDA, nor has any test been approved for detection of the virus in areas other than the cervix."

If you have any questions or concerns, please don't hesitate to call."

(Emphasis added) The diagnostic centre at Columbus, USA observes that history and physical

examination of the petitioner was done. He has no physical signs and no history of concern for HPV or any other infection in the body. Therefore, the bogey that is projected by the complainant/wife that the husband has some physical problem appears to be a white lie.

9. The other bogey projected by the wife is that the petitioner has closed all channels of communications and had never shown any interest in getting the complainant to the USA, this is completely belied by the documents appended to the petition itself, as not one but four appointments were taken by the petitioner for VISA purposes of the wife. The first appointment after the petitioner left to the USA was on 13-10-2020. There are four appointments, confirmation acknowledgments of which are produced by the petitioner as annexures to the petition. They are dated 13-10-2020, 02-03-2021, 07-05-2021 and 24-05-2021; the latest of which reads as follows:

"APPOINTMENT CONFIRMATION APPLICANT DETAILS Applicant Name: xxxx
Visa Class: H - 4 Passport Number: P5705962 Visa H&L Category: visas
Appointment Made By: xxxx Visa Priority: English Number of Applicants: 1 VAC
APPOINTMENT DETAILS Date: Tuesday March 2, 2021 CHENNAI VAC Time:
09.30 (1413) No.82, Kodambakkam High Road,, Nungambakkam,, Chennai, 600034
CONSULAR APPOINTMENT DETAILS Date: Monday March 15, 2021 HYDERABAD
Time: 10:45 (770) 1-8-323, Chiran Fort Lane Begumpet, Secunderabad Andhra
Pradesh, 500003 DOCUMENT DELIVERY INFORMATION Document Delivery Type:
Pick Up Bengaluru Prestige Atrium 2nd floor Unit No."

It is on the 5th appointment, the complainant goes before the visa office and Visa is granted to the complainant, which is also appended as document to the petition. These are documents which speak for themselves. A mail communication on 05-12-2021 is quoted hereinabove. The complainant seeks confirmation regarding her travel to USA. Therefore, it is clearly a bogey projected by the complainant that the petitioner was not interested in getting her to the USA and had blocked all channels; but the documents speak otherwise. The attitude of the complainant also speaks for itself.

Therefore, it is not a case where there is an iota of ingredient against the petitioner/husband for the offences punishable under Section 498A of the IPC or Sections 3 and 4 of the Act. It is misuse and abuse of criminal justice system by the complainant right from the word go. It is in such circumstances the Apex Court in the case of ACHIN GUPTA v. STATE OF HARYANA¹, has held as follows:

"ANALYSIS

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the criminal proceedings should be quashed?

16. The Appellant and the Respondent No. 2 got married in October 2008. The couple lived together for more than a decade and in the wedlock a child was born in March 2012.

17. We take notice of the fact that the Appellant filed a divorce petition in July 2019 on the ground of cruelty. The divorce petition was withdrawn as the Appellant was finding it difficult to take care of his child, while travelling all the way to Hisar on the dates fixed by the Court. The Appellant's mother had to file a domestic violence case against the First Informant in October 2020 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr. P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex

debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

22. Once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet. There is nothing in the words of Section 482 of the Cr. P.C. which restricts the exercise of the power of the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet.

23. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings:--

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

24. This Court, in the case of State of A.P. v. Vangaveeti Nagaiah, (2009) 12 SCC 466 : AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:--

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not

or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are 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 under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontested allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie*, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

26. In Preeti Gupta v. State of Jharkhand, reported in 2010 Criminal Law Journal 4303 (1), this Court observed the following:--

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 which reads as under:

"498-A. 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 purposes of this section, 'cruelty' means:

(a) any wilful 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."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At

the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

(Emphasis supplied)

27. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Arnesh Kumar v. State of Bihar, (Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014). In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before this Court, having failed to obtain the same from the High Court. In that context, the observations made by this Court in paras 6, 7 and 8 respectively are worth taking note of. They are reproduced below:--

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Penal Code, 1860. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr. P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative

sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non- bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr. P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. ..."

(Emphasis Supplied)

28. In the case of Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741, this Court observed as under:--

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in (2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of B.S. Joshi v. State of Haryana it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr. P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

(Emphasis supplied)

29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr. P.C. as once there are allegations disclosing the commission of a cognizable offence then whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of Bhajan Lal (supra). The category 7 as laid reads thus:--

"(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr. P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the

husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in Kaslefsky v. Kaslefsky, [1950] 2 All ER 398 observed as under:--

"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in American Jurisprudence 2nd edition Vol. 24 page 206. It reads thus:--

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual

under one set of circumstances may be extreme cruelty under another set of circumstances."

(Emphasis supplied)

35. In one of the recent pronouncements of this Court in *Mahmood Ali v. State of U.P.*, 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr. P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in *Preeti Gupta* (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

"34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who

may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

38. In the aforesaid context, we looked into Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in Preeti Gupta (*supra*). Sections 85 and 86 respectively are reproduced herein below:

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

85. 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.

Cruelty defined.

86. For the purposes of section 85, "cruelty"

means--

(a) any wilful 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."

39. The aforesaid is nothing but verbatim reproduction of Section 498A of the IPC. The only difference is that the Explanation to Section 498A of the IPC, is now by way of a separate provision, i.e., Section 86 of the Bhartiya Nyaya Sanhita, 2023.

40. We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force."

(Emphasis supplied) The Apex Court considers the entire spectrum of law and holds that the act of the complainant was in gross misuse and abuse of the process of law. The Apex Court further holds that it is the duty of the High Court to look into the FIR with care and little more closely and ascertain whether necessary ingredients to constitute the offence is disclosed or not, as many a time frivolous and vexatious proceedings are permitted to continue. The Court exercising jurisdiction under Section 482 of the Cr.P.C., has a duty to look into not only the complaint but all other attendant circumstances emerging from the record and if need be due care and circumspection be done, to read between the lines. This is exactly what this Court has undertaken in the case at hand.

10. This Court has completely considered the complaint, summary of the charge sheet, the statements recorded and the law as laid down by the Apex Court in the aforesaid judgment. All this exercise is undertaken only to arrive at a conclusion as to any of the ingredients of the offences are met or otherwise. The unmistakable conclusion is that, the complainant in gross misuse and abuse of law has set the criminal law into motion. Such frivolous cases registered by the wife have taken enormous judicial time, be it before the concerned Court or before this Court, and has led to enormous civil unrest, destruction of harmony and happiness in the society. It may not be that these would be the facts in every given case. The Court is only concerned about frivolous and vexatious litigations clogging the criminal justice delivery system, where genuine cases lie in cold storage. If the facts narrated hereinabove are noticed and as observed, the complainant has, in gross misuse and abuse of the process of the law, has set the criminal law into motion. Therefore, it becomes a fit case where the husband must be given liberty to initiate proceedings for malicious prosecution or initiate proceedings under Section 211 of the IPC. Liberty is thus reserved to the husband, for such action to be initiated in accordance with law, if he so desires.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) Proceedings in C.C. No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate, Bangalore arising out of Crime No.35 of 2022 stand quashed qua the petitioner.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other fora.

Consequently, pending applications also stand disposed.

Sd/-

JUDGE Bkp CT:MJ

Yogananda D V vs Smt Likitha P B on 28 March, 2024

-1-

CRL.RP No. 6 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF MARCH, 2024
BEFORE
THE HON'BLE MR. JUSTICE S RACHAIAH
CRIMINAL REVISION PETITION NO. 6 OF 2024

BETWEEN:

YOGANANDA D V
S/O VENKATESH D K
AGED 32 YEARS
R/O DESHAHALLI VILLAGE AND POST
MADDUR TALUK, MADDUR
MANDYA DISTRICT - 571 429.

...PETITIONER

(BY SRI. SHIVA PRASAD M., ADVOCATE)

AND:

SMT. LIKITHA P B
W/O YOGANANDA D V
D/O PARIVARA
LATE BHARATH
AGED 29 YEARS
R/O CHERANGALA VILLAGE
MADIKERI TALUK
KODAGU DISTRICT

...RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W S.401 CR.P.C
PRAYING TO SET ASIDE THE ORDER PASSED ON 13.01.2023
IN CRL.MISC.68/2022 BY ADDITIONAL CIVIL JUDGE AND JMFC,
MADIKERI AND ORDER PASSED ON 02.11.2023 IN CRIMINAL
REVISION PETITION NO.82/2023 BEFORE 1ST ADDITIONAL
DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI AND
ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD AND RESERVED ON 16.01.2024, COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE
THE FOLLOWING:-

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CRL.RP No. 6 of 2024

ORDER

1. This revision petition is filed by the petitioner, who is the husband of the respondent herein. The respondent herein filed a criminal miscellaneous case before the Trial Court seeking for maintenance and also for an order of protection in terms of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act'). She has contended that her marriage was solemnized on 23.02.2018 at Sri Dharmasthala Manjunatha Swamy Temple, Dharmasthala, as per Hindu customs and traditions. After the marriage, she left her job and started residing with her husband for 2-3 years. Due to the said wedlock, a boy baby was born to them. The petitioner herein was addicted to alcohol and he used to consume alcohol everyday. In addition to drinking alcohol, it is alleged that, he was demanding dowry from the respondent herein. It is stated that the mother of the respondent herein had paid Rs.1,00,000/- to the petitioner herein through the bank account. After having received the said amount, the petitioner and the respondent were living at Desahalli, Mandya, for four months. On 01.05.2022, the petitioner herein abused the respondent in a filthy language and assaulted her. It is further stated that the respondent herein was neglected by not only the petitioner herein, but also by her in-laws too. She approached Mahila Sangha on several occasions and the members of the said Mahila Sangha advised the petitioner and his parents to take care of the respondent herein properly. Despite the instructions or advice, the petitioner herein and his parents used to harass the respondent in one or other pretext and the petitioner herein failed to provide food, clothing and shelter to the respondent. She being a female and not able to maintain herself and her child, has approached the Court by seeking maintenance of Rs.25,000/- per month.

2. The Trial Court after having considered the evidence on record and also the documents available on record, directed the petitioner herein to pay maintenance of Rs.3,000/- per month to the respondent herein from the date of filing of the said petition. Being aggrieved by the same, the respondent herein had approached the I Additional District and Sessions Judge, Kodagu, at Madikeri by filing a revision petition, seeking enhancement of maintenance awarded by the Trial Court. The Appellate Court allowed the revision petition and set aside the order passed by the Trial Court. The Appellate Court directed the petitioner herein to pay maintenance of Rs.20,000/- per month to the respondent from the date of the petition. Hence, the petitioner has approached this Court seeking to set aside the order passed by the Appellate Court.

3. Admittedly, the Trial Court passed an order on the interim application filed by the respondent herein. The provision under Section 23 of the said Act provides the Court to pass interim and ex parte orders. Section 23 of the Act reads thus:

"23. Power to grant interim and ex parte orders.-- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

As against any such order, the aggrieved party shall file an appeal before the Appellate Court in terms of Section 29 of the said Act. Section 29 of the Act reads thus:

"29. Appeal.--There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

4. On careful reading of the above two provisions, it makes it clear that if any order passed by the Trial Court, the aggrieved party has to approach the Appellate Court by filing an appeal as stated supra. However, the respondent had filed a revision petition, which is not maintainable. Such being the fact, the Sessions Court entertained the revision and passed an order, which is considered to be non-est in law. Notwithstanding any such order being passed, the revision petition before this court by unsuccessful person is also not maintainable.

5. Learned counsel for petitioner has produced the copy of the judgment of the Co-ordinate Bench of this Court in the case of B.A.Harish Gowda v. P.Lankesh¹ and copy of the judgment of the Bombay High Court in the case of Inayatullah Rizwi v. Rahimatullah & Ors.,² and tried to convince the Court that the revision is maintainable before this Court.

6. On careful reading of the judgment of the Co-ordinate Bench of this Court in B.A.Harish Gowda case, ILR 2000 Karnataka 2657 1981 CrLLJ 1398 referred to supra, it is observed in paragraph No.9 that, the revision is maintainable even though there is a bar under Section 397(2) of the Code of Criminal Procedure. Similarly, the High Court of Bombay has opined that the second revision to the High Court, even at the instance of the unsuccessful opponents before the Sessions Court, the revision is maintainable. The said observations are made in paragraph Nos.19 and 20, which read thus:

"19. We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below becomes final, but when the Sessions Judge reverses the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.

20. We, therefore, hold that these two criminal applications filed here by the persons who were non- applicants before the Sessions Judge in the Criminal Revisions and who are aggrieved by the decisions of the Sessions Judge are tenable and competent. There is no need to convert these petitions into applications under Section 482 of the Code. These criminal revisions shall be dealt with and disposed of by the learned single Judge according to law."

On careful reading of the judgment of the Bombay High Court, the facts of the case are not forthcoming. Therefore, the ratio of the judgment is not applicable to the present case.

7. On careful reading of the facts of the present case, I am of the considered opinion that the revision petition is not maintainable. Without advertizing to the merit of the case, the revision petition stands disposed of. Ordered accordingly.

The liberty is reserved to the petitioner herein to approach the appropriate forum to seek remedy in accordance with law and all contentions are kept open.

Sd/-

JUDGE Bss

Anup Harkuni vs Savita on 28 March, 2024

Author: H.B.Prabhakara Sastry

Bench: H.B.Prabhakara Sastry

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NC: 2024:KHC:12904-DB
MFA No. 3231 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY
AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR
MISCELLANEOUS FIRST APPEAL NO. 3231 OF 2021 (FC)
BETWEEN:

ANUP HARKUNI S/O. BASAVARAJ HARKUNI,
AGE: 35 YEARS,
RESIDING AT # 251/A, 1 FLOOR,
18TH C MAIN, KORAMANGALA,
6TH BLOCK, BANGALORE-560095.

...APPELLANT

(BY SRI. BASAVARAJ R. BANNUR, ADVOCATE)

AND:

SAVITA D/O. BASAVANTRAYGOUDAA S. MUDNUR,
AGE: 31 YEARS, NOW RESIDING AT # 2081,
SAI SADAN, HIGH STREET, GANESHPUR,
BELAGAVI-591108.

...RESPONDENT

(BY SRI. VASANTH KUMAR H.T., ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION

Digitally
signed by
SHAKAMBARI
19(1) OF FAMILY COURT, PRAYING TO CALL THE RECORDS AND SET

Location:
HIGH COURT
OF ASIDE THE JUDGMENT AND DECREE DATED 22.03.2021 PASSED IN

M.C.NO.3411/2016 PASSED BY THE VI ADDITIONAL PRINCIPAL,

KARNATAKA JUDGE, FAMILY, BANGALORE IN PART ONLY IN SO FAR AS
DIRECTING THE APPELLANT TO PAY THE MAINTENANCE OF
40,000/- PER MONTH TO THE RESPONDENT.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD
AND RESERVED ON 15.02.2024, COMING ON FOR PRONOUNCEMENT
OF JUDGMENT, THIS DAY, RAMACHANDRA D. HUDDAR, J.,
DELIVERED THE FOLLOWING:

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NC: 2024:KHC:12904-DB
MFA No. 3231 of 2021

JUDGMENT

The appellant-husband has preferred this appeal being aggrieved by the judgment and decree dated 22.03.2021 passed in M.C. No.3411/2016 by the VI Additional Principal Judge, Family Court, Bengaluru (hereinafter referred to as the 'Trial Court') directing the appellant to pay, the monthly maintenance of `40,000/- per month to the respondent. So far as the decree so granted for dissolution of the marriage between the appellant and respondent is not challenged by him by preferring any separate appeal. So also the respondent has not challenged the said decree of dissolution of her marriage with the appellant. Thus, the decree of dissolution of marriage between the appellant and respondent granted by the Trial Court has attained finality.

2. This appeal is restricted only with regard to the permanent alimony granted by the Trial Court directing the appellant to pay the maintenance of `40,000/- per month to the respondent. The Trial Court has directed the NC: 2024:KHC:12904-DB appellant to pay the same till respondent becomes disentitled for the same. Therefore, the brief facts germane towards the decision of this appeal are as under:

2.1. That, the marriage of the appellant and respondent was solemnized on 27.01.2015 at Dharmanath Bhavan, Dharmanath Circle, Belagavi as per the rights, rituals and customs prevailing in their community. After marriage, both the appellant and the respondent resided together for a period of eight months only.

2.2. It is alleged that, because of the behaviour of the respondent, misunderstanding between them arose.

Respondent used to pickup quarrels for silly reasons. Though elderly members of the family intervened and tried to reconcile the matrimonial dispute between them, it was not reconciled. The appellant is Graduate in B.E., in Electronics and Communication and employed in Intel Technology India Private Limited and was earning `1,70,000/- per month in the year 2016. Besides that, his parents owned an apartment and three sites at Belagavi.

NC: 2024:KHC:12904-DB Whereas, respondent is a BE Graduate in Computer Science with M.B.A. in H.R. and Marketing subject.

3. When the matter was pending before the Family Court (Trial Court), the respondent-wife filed I.A.No.6 under Order VII Rule 7 of Code of Civil Procedure, 1908 (for short 'CPC'), praying to mould the relief so claimed in her petition in M.C.No.900/2016 and grant permanent alimony in the interest of justice and equity. So also filed I.A.No.7 under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') to direct the appellant-husband to pay the litigation expenses. She also filed I.A.No.8 under Section 25 of the Act, 1955 seeking direction to the husband to pay the permanent alimony amounting to ` 2(two) crores to her.

4. Along with these applications, she filed her affidavits reiterating the allegations made against her husband so also the capacity of the husband to pay the said maintenance and litigation expenses which are pleaded by her in her petition as well as in her objections.

NC: 2024:KHC:12904-DB According to her, she is entitled for the aforesaid reliefs so claimed in I.A.Nos.6, 7 and 8.

5. To these applications, the appellant filed independent objections denying all her assertions made in the affidavits. According to him, she cannot seek the relief of moulding of reliefs as claimed by her. It is contended that, respondent-wife has completed B.E. with M.B.A. and working in Lance Soft India Private Limited at ITPL as a H.R. Manager. She is drawing a salary of ` 1,00,000/- per month. Suppressing the material fact, she has claimed the permanent alimony. She is also an income tax assessee. She is pursuing her career and working as a H.R. Manager since more than five years. This fact has been deliberately suppressed by her. She has got a very good prospect of second marriage. The allegations that, the husband is working and getting salary of ` 1,70,000/- per month is all false. It is contended that, since 19.09.2019, he is unemployed and presently not gainfully employed in any company. He is in search of new job. Because of Covid-19 Pandemic, and because of recession NC: 2024:KHC:12904-DB he is not getting any job. According to him, the respondent-wife is not entitled for any litigation expenses or permanent alimony as prayed in her respective applications.

6. It is noticed that, on 08.03.2021 before the Trial Court, the counsel for the husband i.e., the appellant submitted his no objection to I.A.No.6. The same is recorded in the order sheet. On that day, the learned Trial Judge heard the arguments of both the side on I.A.Nos.7 and 8 and passed a detail judgment on 22.03.2021 dismissing the petition filed by the wife-respondent in M.C. No.900/2016 under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955'), and allowed M.C. No.3411/2016 filed by the appellant-husband under Section 13(1)(i-a) of the Act, 1955 and granted a decree of dissolution of marriage solemnized between the appellant and respondent on 27.01.2015 at Dharmanath Bhavan, Dharmanath Circle, Belagavi, thereby, the registration of the marriage was ordered to be cancelled.

NC: 2024:KHC:12904-DB

7. The Trial Court further considering I.A.Nos.7 and 8 directed the appellant-husband to pay the litigation expenses of `20,000/- to respondent-wife and also directed to pay maintenance of `40,000/- per month to the respondent-wife till she becomes disentitled for the same. While passing such an order, the learned Trial Court raised point Nos.5 and 6 in the judgment and gave a finding in paragraph No.64 of the said judgment. While giving such findings, the Trial Court took into consideration the assets and liabilities statements submitted by both husband and wife and has concluded that, the husband has submitted his income tax showing his total income as `25,32,360/- and he has paid income tax of `6,04,752/-. Even it is considered by the Trial Court that, the respondent-wife was working earlier and when such applications were filed she was not working. She is a B.E. and M.B.A. degree holder used to work as H.R. Manager at Lance Soft India Private Limited and has given the information from the Income Tax Department on 07.09.2020. She is having active income tax account.

NC: 2024:KHC:12904-DB

8. Considering all these aspects, the learned Trial Court fixed the litigation expenses and permanent alimony per month as stated above.

9. This judgment and decree passed by the Trial Court is challenged by the appellant-husband by preferring this appeal to the limited extent of granting monthly maintenance of `40,000/-.

10. Learned counsel for the appellant with all vehemence and force submits that, now the appellant-husband is unemployed. He is in search of new job. Therefore, he is unable to pay that much of monthly maintenance as ordered by the Trial Court. It is exorbitant. He submits that, when respondent-wife is a B.E. and M.B.A graduate earning sufficient income being the income tax assessee, is capable of maintaining herself. She has withheld all the documents showing her income. The Trial Court has not considered her education. The Bank statement shows her income. The appellant husband has got three dependants and has got liability to NC: 2024:KHC:12904-DB pay the loan amount. Because of this heavy liability, it is submitted that, it is not possible for the appellant-husband to pay the said maintenance awarded by the Trial Court. According to him, this case may be remanded to the Trial court for giving finding about the income of both.

11. As against this submission, the counsel for the respondent-wife supported the findings of the Trial Court on point Nos.5 and 6 and submits that, though long back there was an order by the Trial Court to pay the maintenance and litigation expenses, the appellant has not paid. There is no document to show that respondent-wife is working in Multi National Company.

12. It is further submitted by him that, in view of the findings of the Trial Court, and also the final order directing the appellant-husband to pay the maintenance, this appeal merits no consideration and is liable to be dismissed.

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NC: 2024:KHC:12904-DB

13. We have given our anxious consideration to the arguments of both the side. Perused the records secured from the Trial Court. In view of the rival submission of both the side and the claim of the appellant and respondent made out in their respective submissions, the points that would arise for our consideration are :

- i) Whether the amount of alimony awarded by the Trial Court to be paid per month and fixing the litigation expenses require interference by this Court?
- ii) What order?

14. Before advertizing to the other aspects of the case, let us narrate the admitted facts between both the side.

15. That, the respondent-wife has filed the petition in M.C. No.900/2016 seeking restitution of Conjugal Rights. Whereas the appellant-husband filed the petition in M.C. No.3411/2016 seeking decree of divorce on the ground of cruelty. Both the petitions were tried together by the VI Additional Principal Judge, Family Court,

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NC: 2024:KHC:12904-DB Bengaluru. In the said petitions, respondent-wife filed I.A.Nos.6, 7 and 8 seeking moulding of relief and prayed for grant of permanent alimony and litigation expenses. For these interim applications appellant-husband filed detailed objections. The appellant submitted his no objections to allow I.A.No.6. On contest, the Trial Court passed an order granting decree of dissolution of marriage as prayed by the appellant-husband and dismissed the petition of the respondent - wife and ordered to pay `20,000/- towards litigation expenses and `40,000/- per month as permanent alimony as stated above. These admitted facts need not be reanalysed again.

16. It is a fact admitted by both the side that, as per the directions given by the Hon'ble Apex Court in the case of Rajnesh Vs. Neha and others reported in 2021 (2) SCC 324 both the appellant and respondent have filed their respective assets and liability statements.

17. So far as assets and liability statements submitted by the appellant, he has filed income tax

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NC: 2024:KHC:12904-DB returns and has shown his total income at `25,32,360/- for the assessment year 2020-21 and has paid a tax of `6,04,752/-. In his assets and liability statement, he has stated so about ITR-5 form dated 26.12.2020 filed for the assessment year 2020-21 attached (IT returns). He also has shownen about the details of loan taken from SBI, Belagavi to the extent of `26,50,000/- and paying an EMI of `29,000/- per month. He has shown the outstanding loan amount at `18,42,082/-. According to him, till the date of filing of affidavit he has paid `8,07,918/-. He has taken loan for the purpose of purchasing flat No.204 in the month of November - 2014. He has stated that, the respondent-wife is working as H.R. in Lance Soft India Private Limited, and

getting salary of `1,00,000/- per month. She is also income tax assessee. He has received the communication through mail from the income tax authorities on 07.09.2020.

18. In addition to that, he has stated that, he has to maintain his parents who are aged. His father is

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NC: 2024:KHC:12904-DB suffering from heart ailments, hyper tension, highly diabetic and has spent substantial money towards medical expenses of his parents. He also states that, he has to face so many litigation expenses foisted by the respondent under the provisions of Protection of Women from Domestic Violence Act, 2005, the Code of Criminal Procedure, 1973 and the Hindu Marriage Act, 1955 etc.

19. Relying upon assets and liability statement and the serious objections filed by him to I.A.Nos.7 and 8, it is submitted by the counsel for the appellant-husband that, the said impugned order awarding monthly maintenance is exorbitant. He also relied upon the judgment in the case of Neha (supra).

20. As against this submission, the counsel for the respondent also relies upon the assets and liability statement submitted by the wife and submits that, herself and appellant are educated. She admits about income tax returns and according to her, she is now unemployed. She admits her qualification. She alleges that, appellant-

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NC: 2024:KHC:12904-DB husband is a Senior Engineer at AMD, India Pvt. Ltd. and getting a salary of `2,17,809/- per month and owned two BHK flat in classic complex at Tilakwadi, Belagavi and also is having more than three immovable non agriculture properties at Belagavi. Showing her assets and liabilities in the affidavit throughout she has stated that, she has no income.

21. It is submitted by learned counsel for the respondent that, the Trial Court is justified in passing the impugned order.

22. So far as granting of permanent alimony is concerned, Section 25 of the Act, 1955 speaks of permanent alimony and maintenance. This section is constructed by the legislature and directed the Courts exercising jurisdiction under the Act, 1955. The draftsmen avoided the use of the words "wife and husband" used the words "either party". The expression used in the opening part of Section 25 of the Act, 1955 enables the Court in exercising jurisdiction under the act at the time of passing any decree or at any time subsequent there to grant of

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NC: 2024:KHC:12904-DB alimony or maintenance cannot be restricted only to, there of judicial separation under Section 10 or divorce under Section 13 of the Act, 1955.

23. A plain reading of Section 25 of the Act, 1955 makes it clear that, an order of permanent alimony can be made only on passing of a decree for Restitution of Conjugal Rights, judicial separation, declaration that, the marriage is void, annulment of voidable marriage or for dissolution of marriage by a divorce. Thus, it is clear from Section 25 of the Act, 1955 that, the Court will have jurisdiction to pass orders for permanent alimony and maintenance under Section 25(1) of the Act, 1955 either at the time of passing any decree or at any time subsequent there to. That means, grant of maintenance under this Section is incidental to the decree granting substantial reliefs under the Act.

24. The amount of maintenance, whether it is fixed by decree or by agreement is liable to be increased or decreased, whenever there is change of circumstances as

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NC: 2024:KHC:12904-DB would be justified a change in the rate. That means Section 25 of the Act, 1955 lays down that, for arriving at a quantum of permanent maintenance to be ordered, the Court must have regard to the respondent's own income and property and also the income and property of the appellant and conduct of the parties and facts and circumstances of the case. There is no rigid rule or any fixed criteria as to the quantum of maintenance and the matter of assessment is left to the discretion of the Court. The Court has to consider all relevant circumstances keeping in view of the status of the parties, ability of the spouses, earning and their future prospects and reasonable requirements of the respondent.

25. It is settled that, there are certain aspects to be considered in fixing the permanent alimony. In estimating what would be a reasonable amount for the wife's maintenance and to support her life, the circumstances which would be taken into account are:

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NC: 2024:KHC:12904-DB

- 1) the conduct of the parties.
- 2) the position in lives
- 3) the age and respective means
- 4) the amount of the provision actually made
- 5) the existence or non existence of children, and who is to have the care and custody of them
- 6) any other circumstances which may be important in any particular case.

26. In the instant case, it is stated by the appellant himself that, his total income for the year ending 2020-21 is `25,32,360/- and accordingly he has paid income tax for the year at `6,04,752/- for the assessment year 2020-21.

This is bornout from the income tax returns submitted by him along with his assets and liability statement. The learned Trial Court has considered this aspect while answering point Nos.5 and 6.

27. It also has considered that, the respondent is B.E. and M.B.A. graduate and used to work as a H.R. in the Lance Soft India Private Limited. The appellant has

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NC: 2024:KHC:12904-DB produced the income tax department letter which he has received through mail. As per the assets and liability statement of the respondent, she admits her profession prior to her marriage and after her marriage. According to her she submitted her income tax returns prior to and after her marriage. When she claimed maintenance, she had not filed any income tax returns. Her affidavit is filed showing her assets and liabilities. She has shown herself as non agrarian deponent and submitted a declaration to that effect.

28. From the income tax returns submitted by the appellant, it shows that, there is a considerable increase in the income of the appellant. He has produced the interest certificate showing total payment at `3,07,013/-. He has produced the e-mail mentioning date as 07th September 2018 belongs to the respondent. This document does not show the income of the respondent. It shows that, the income tax returns for the assessment year of 2015-16 belongs to the respondent was uploaded on 31.08.2015 and it is pending verification. He has produced copy of the

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NC: 2024:KHC:12904-DB Form No.16 for the period commencing from 21.07.2014 to 31.03.2015 belonging to the respondent showing her monthly income at `92,280/-. These documents are not disputed by the respondent. Subsequent to 2015 to show that, respondent is really earning no document is produced. To show that his father is suffering from ailments, he has produced the discharge summary sheet issued by KLE Hospital, Belagavi. It shows that, his father was admitted on 28.12.2020 and was discharged on 01.01.2021. wherein he has undergone for coronary angiography. So far as owning the sites is concerned, the appellant is not disputing the same. The bank statements are produced to show the salary drawn by the appellant.

29. On scrupulous reading of all these documents and the affidavits filed by the appellant and respondent, they shows that, the appellant is earning sufficient income every month and he is a income tax assessee.

30. In the judgment in the case of Neha (supra), certain guidelines/directions are issued regarding grant of maintenance. In part-B of paragraph No.13 of the said

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NC: 2024:KHC:12904-DB judgment, it is observed about the enactment of law with regard to maintenance based upon social justice to provide recourse to defendant, wives and children for their financial support. It is one of the major issue of social justice to protect women and children who falls within the constitutional sweep of Article 15(3) reinforced by Article 39(A) of the Constitution of India.

31. When respondent being the defendant on the appellant after dissolution of marriage and even at the time of pendency of the petition filed by the appellant was unemployment, though she is a B.E. and M.B.A graduate have to lead life to the status of the appellant who is a Software Engineer.

32. Considering all these aspects, the learned Trial Court has awarded the monthly maintenance to the respondent till she is disentitled. Both the appellant and respondent are quiet young. The appellant was fair enough before the Trial Court to say no objection to mould the relief but, contested the grant of maintenance. Assets and liability statement filed by him clearly show the income

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NC: 2024:KHC:12904-DB earned by the appellant. His submission is supported by his own documents showing substantial monthly income he is earning. The contents of the documents are supported by the objection statements filed by the respondent.

33. Now a days, because of inflation the money value has been decreased and cost of living is increased. No doubt the respondent is a B.E. and M.B.A. graduate. In due course of time, the respondent may get a good job and she also may draw handsome salary. She has to lead her life suitable to her status. In a city like Bengaluru, atleast 25% of the income has to be spent towards house rent. The remaining has to be spent towards maintenance or taking care of oneself. The transportation expenses is also more. In addition to that, food, medical expenses etc. So atleast to live to the status of the appellant and to meet the minimum requirements atleast `40,000/- per month is required for the respondent in a city like Bengaluru. Therefore, in our considered view, the learned

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NC: 2024:KHC:12904-DB Trial Court based upon the assets and liability of both side and also the status of both the side and looking to their earning capacity has ordered monthly maintenance of `40,000/- per month.

34. In our considered opinion, such an award towards monthly maintenance is just and proper. Though it is argued that, the amount of maintenance so awarded is on higher side and it is requested to send back the records for recoding the evidence with regard to payment of maintenance, but when sufficient evidence is placed on record, in view of the judgment in the case of Neha (supra),

and also in view of the factual features as the appellant and respondent litigating from 2016 and already more than eight years have been lapsed in the litigation, the argument of the counsel for the appellant has no merits on the point. If the litigations continue, the appellant and respondent also become older. There are no acceptable grounds to reduce the amount of maintenance so ordered by the Trial Court.

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NC: 2024:KHC:12904-DB

35. Considering all these aspects and in view of the law laid down by the Hon'ble Apex Court with regard to maintenance, there are no grounds to interfere the judgment and order of maintenance passed by the Trial Court.

36. We do not find any factual or legal error committed by the Trial Court in awarding the maintenance and litigation expenses.

37. Therefore, the points for consideration raised supra are answered in the negative.

38. Consequently, the appeal filed by the appellant is liable to be dismissed with cost to the respondent.

39. Resultantly, we pass the following:

ORDER

- i) Appeal filed by the appellant is dismissed with cost of the respondent.
- ii) The judgment and decree passed by the Trial Court in M.C. No.3411/2016 ordering to pay the

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NC: 2024:KHC:12904-DB maintenance of `40,000/- per month and the litigation expenses as ordered, is hereby confirmed.

iii) The appellant is hereby directed to deposit or make payment of the arrears of maintenance digitally to the respondent till the month of February-2024 within two months from today.

iv) Send back the Trial Court records along with copy of the judgment.

Sd/-
JUDGE

Sd/-
JUDGE

SMM

Aruna vs State Of Karnataka By on 4 June, 2024

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NC: 2024:KHC:19215
CRL.P No. 4397 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MRS JUSTICE M G UMA

CRIMINAL PETITION NO. 4397 OF 2024

BETWEEN:

1. ARUNA
W/O KUMARASWAMY .M.S.,
AGED ABOUT 51 YEARS,
RESIDING AT NO.6504,
A.G. BLOCK, 7TH CROSS,
N.R. MOHALLA, MYSURU
CITY - 570 007

2. M.S. KUMARASWAMY
S/O LATE SHIVANNA,
AGED ABOUT 61 YEARS,
RESIDING AT NO.6504,
A.G. BLOCK, 7TH CROSS,

Digitally
signed by
BHARATHI S
N.R. MOHALLA, MYSURU
CITY - 570 007

Location: high
court of
karnataka

(BY SRI. DINESH .B.R., ADVOCATE)

...PETITIONERS

AND:
STATE OF KARNATAKA BY
KIKKERI POLICE STATION,
K.R. PETE TALUK,
MANDYA DISTRICT,
PIN CODE - 571 427.

(BY SRI. .M.R. PATIL, HCGP)

...RESPONDENT

THIS CRL.P IS FILED U/S 438 CR.PC PRAYING TO ENLARGE
THE PETITIONERS ON BAIL IN THE EVENT OF THEIR ARREST IN THE
CR.NO.32/2024 REGISTERED KIKKERI POLICE STATION, MANDYA
DISTRICT FOR THE OFFENCE P/U/S 143, 498A, 506, 507, 304B R/W

FILE OF III ADDL. DIST. AND SESSIONS JUDGE, MANDYA (SITTING AT SRIRANGAPATNA).

THIS CRL.P, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners-accused Nos.2 and 3 are before this Court seeking grant of anticipatory bail in Crime No.32/2024 of Kikkeri Police Station, pending on the file of the learned CJ (Sr.Div) and JMFC Court, K.R.Pet, Mandya District registered for the offences punishable under Sections 143, 498A, 506, 507, 304B R/w Section 149 of Indian Penal Code (for short 'IPC'), on the basis of the first information lodged by the informant Manjula.

2. Heard Sri. Dinesh B.R., learned counsel for the petitioners and Sri.M.R.Patil, learned High Court Government Pleader for the respondent-State. Perused the materials on record.

3. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

NC: 2024:KHC:19215 "Whether the petitioners are entitled for grant of bail under Section 438 of Cr.P.C.?"

My answer to the above point is in 'Affirmative' for the following:

REASONS

4. Petitioners-accused Nos.2 and 3 are before this Court seeking grant of anticipatory bail. It is stated that accused No.1 married the deceased on 06.03.2022. Within two years, she had committed suicide by hanging in her parental house. A detailed death note is said to have been left by the deceased making specific allegation against accused No.1 and generally against other accused. These petitioners are parents of accused No.1. It is stated that investigation is almost completed after the main accused i.e., accused No.1 is apprehended and he is in judicial custody.

5. Learned counsel for the petitioners has submitted that accused No.1 has filed MC No.178/2023 under Section 9 of Hindu Marriage Act seeking Restitution of Conjugal Rights. In the meantime, the deceased had filed a complaint under the NC: 2024:KHC:19215 Protection of Women from Domestic Violence Act, 2005 alleging the commission of violence against her. Thereafter, she was residing in her parental house and took the extreme step of committing suicide there itself. Under such circumstances, I am of the opinion that these petitioners being the parents of accused No.1,

may not be required for interrogation. Hence, I am of the opinion that the petitioners may be granted anticipatory bail subject to conditions, which will take care of the apprehensions expressed by the learned High Court Government Pleader that the petitioners may abscond or may tamper or threaten the prosecution witnesses.

6. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER The petition is allowed.

The petitioners are ordered to be enlarged on bail in the event of their arrest in Crime No.32/2024 of Kikkeri Police Station Police Station.

The petitioners are directed to appear before the Investigating Officer within 15 days from the date of receipt of NC: 2024:KHC:19215 this order and on their appearance, the Investigating Officer shall enlarge them on bail subject to the following conditions:-

- a. The petitioners shall furnish the bond in a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each with two sureties each for the likesum to the satisfaction of the Investigating Officer; b. The petitioners shall not commit similar offences;
- c. The petitioners shall appear before the Investigating Officer or the court as and when required; and d. The petitioners shall not threaten or tamper the prosecution witnesses.

On furnishing the sureties by the petitioners, the Investigating Officer is at liberty to verify the correctness of the address and authenticity of the documents furnished by them. On satisfaction of the said documents, he may proceed to accept the sureties within a reasonable time.

Sd/-

JUDGE BH

Chandrakanth Hiremath And Ors vs Sumangala Hiremath on 21 June, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

-1-

NC: 2024:KHC-K:4091
CRL.P No. 200350 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY
CRIMINAL PETITION NO. 200350 OF 2023 (482)

BETWEEN:

1. SRI CHANDRAKANTH HIREMATH
S/O LATE ANANDANAYYA HIREMATH ,
AGED ABOUT 41 YEARS,
OCC: PRIVATE SERVICE,
MRUTYUNJAY NIVAS,
KANAKADAS BADAVANE,
VIJAYAPURA -586 101

2. SMT. DANAMMA HIREMATH
W/O MAHADEVAYYA
AGED ABOUT 54 YEARS
OCC: HOUSE WIFE

Digitally signed by
SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA
TQ: MUDDEBIHAL

3. SRI MAHADEVAYYA HIREMATH
S/O NAGAYYA HIREMATH
AGED ABOUT 52 YEARS
OCC: PRIVATE
ARE RESIDING AT
NEAR GRAM DEVATE TEMPLE
RAJWADE, TALIKOTI

DIST: VIJAYAPURA-586 214.

...PETITIONER

(BY SMT. ANUSUYA HIREMATH, ADV)

-2-

NC: 2024:KHC-K:4091

CRL.P No. 200350 of 2023

AND:

SMT. SUMANGALA HIREMATH
W/O CHANDRAKANTH HIREMATH,
AGED ABOUT 29 YEARS,
OCC: SWAMY VIVEKANAND PU AND
DEGREE COLLEGE AND OXFORD COLLAGE
AT PRIVATE SERVICE,
R/O NEAR ANJANEYA TEMPLE
PWD CAMP, WARD NO.29,
SHINDHANUR
RAICHUR-584 128.

...RESPONDENT

(BY SRI S.S.MAMADAPUR, ADV.)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.186/2018
FILED BY THE RESPONDENT FOR THE RELIEF SOUGHT UNDER
SECTION 18 (A)(B)(F), 19(1)(a) (L)(3)(5), 20, 22 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005 NOW THE CASE IS PENDING ON THE FILES OF
HONOURABLE COURT OF THE 1st ADDL. CIVIL JUDGE AND
J.M.F.C. SINDAGI,

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioners are before this Court with a prayer to quash the entire proceedings in Crl.Misc.No.186/2018 filed by the respondent herein pending before the Court of Civil Judge & JMFC, Sindagi, seeking reliefs under Sections 18(a)(b)(f)(g), 19(1)(a)l(3)(5), 20 & 22 of the Protection of Women from Domestic Violence Act, 2005.

NC: 2024:KHC-K:4091

2. Heard the learned Counsel for the parties.

3. Learned Counsel for the petitioners having reiterated the grounds urged in the petition, submits that absolutely there is no material as against petitioner nos.2 & 3 in the present case. Unnecessarily they have been implicated in the impugned proceedings. Petitioner nos.2 & 3 are the sister and

brother-in-law of petitioner no.1. No relief is sought for as against them. Pendency of the proceedings has been causing unnecessary harassment to them. Accordingly, she prays to allow the petition.

4. Learned Counsel for the respondent submits that the impugned proceedings is pending since the year 2018 and the petitioners have all along contested the proceedings before the Trial Court. Before the Trial Court, evidence of both the parties is recorded and the case is now at the stage of final arguments. He, accordingly prays to dismiss the petition.

5. The order sheet of the Trial Court in the present case would reflect that the petitioners herein have entered appearance before the Trial Court and contested the petition by NC: 2024:KHC-K:4091 filing statement of objections. They have suffered multiple orders before the Trial Court. The order sheet also would reflect that the evidence of both the parties in the impugned proceedings has been recorded. Learned Counsel for the respondent has brought to the notice of this Court that the matter is at the stage of arguments on the main matter. Therefore, I do not find any good reason to entertain this petition at this stage on the grounds urged by the learned Counsel for the petitioners. Accordingly, petition is dismissed with a request to the Trial Court to dispose of the case on merits, as expeditiously as possible.

Sd/-

JUDGE KK

Channabasavaiah vs Smt Rudramma on 25 March, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

- 1 -

NC: 2024:KHC:12243
CRL.P No. 2806 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 2806 OF 2023

BETWEEN:

CHANNABASAVAIAH
S/O T.G. BASAVARAJU
AGED 56 YEARS
R/O BHAGAVATHIKERE
MAIDOLALU POST
BHADRAVATHI TALUK
SHIMOGADIST - 577 661.

...PETITIONER

(BY SRI B.N. SHETTY, ADV.)
AND:

SMT RUDRAMMA
W/O LATE PUTTASWAMY
AGED 38 YEARS
C/O PREMAMMA
W/O PARASAPPA
HALEBARANDURU VILLAGE
BAHDRAVATHI TALUK
SHIMOGA DIST.

...RESPONDENT

Digitally signed
by B A KRISHNA
KUMAR
Location: HIGH
COURT OF
KARNATAKA

(BY SRI S.N. HATTI, ADV.)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO SET ASIDE
THE ORDER IN CRL.A.NO.152/2015 ON THE FILE OF THE III ADDL.
DIST. JUDGE, SHIVAMOGGA DATED 15.09.015 AND THE ORDER

Channabasavaiah vs Smt Rudramma on 25 March, 2024

PASSED UNDER SEC.29 OF THE PROTECTION OF WOMEN FORM
DOMESTIC VIOLENCE ACT BY THE JMFC II COURT, SHIVAMOGGA IN
CRL.MISC.NO.1/2015.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE
COURT MADE THE FOLLOWING:

-2-

NC: 2024:KHC:12243
CRL.P No. 2806 of 2023

ORDER

1. Learned counsel for the petitioner submits that though initially Criminal Revision Petition was filed challenging the orders impugned, in view of the office objection, Criminal Revision Petition was converted into a Criminal Petition.
2. The Full Bench of the Allahabad High Court in the case of Dinesh Kumar Yadav vs. State of Uttar Pradesh and Another - AIR 2017 All 29, has held that as against an order passed by the appellate Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005, a revision lies under Section 397 of Cr.P.C.
3. In view of the aforesaid judgment of the Full Bench of the Allahabad High Court, Criminal Petition is not maintainable. Learned counsel for the petitioner is permitted to convert this Criminal Petition into Criminal Revision Petition.
4. For statistical purposes, this Criminal Petition stands disposed of.

Sd/-

JUDGE DN

Dr. Sukumar .T.K @ Kiran vs State Of Karnataka on 18 June, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

-1-

NC: 2024:KHC:21672
CRL.P No. 11112 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 11112 OF 2023

BETWEEN:

1. DR. SUKUMAR .T.K @ KIRAN
S/O KUMARASWAMY T.K.,
AGED ABOUT 34 YEARS,
OCC. DOCTOR.
2. KUMARASWAMY T.K.,
S/O LATE T.D. KALAPPA
AGED ABOUT 64 YEARS,
OCC. RETIRED EMPLOYEE.
3. SUKANYA
W/O KUMARASWAMY T.K.,
AGED ABOUT 54 YEARS,
OCC. HOUSEWIFE.

Digitally signed
by NAGAVENI

Location: HIGH
COURT OF
KARNATAKA

R/AT: NO.14/A, 1ST CROSS,
ESHWAR NAGAR,
BANASHANKARI 2ND STAGE,
BENGALURU, KARNATAKA.

...PETITIONERS

(BY SRI RAJATH, ADVOCATE)

AND:

1. STATE OF KARNATAKA

BY WOMEN POLICE STATION,
MYSURU CITY REPRESENTED BY

-2-

NC: 2024:KHC:21672
CRL.P No. 11112 of 2023

STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. MRS. AKSHATHA
W/O SUKUMAR T.K., ALIAS KIRAN
AGED ABOUT 30 YEARS,
R/AT: 1065/6F-26
1ST MAIN
VIDYARANYAPURAM,
MYSURU - 570 008.

... RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL.SPP FOR R-1;
SRI C.N.RAJU, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C., PRAYING TO QUASH THE PROCEEDINGS IN
C.C.NO.104/2023 ARISING OUT OF CHARGE SHEET DATED
05.12.2022 FILED BY RESPONDENT NO.1 WOMEN P.S.,
MYSURU POLICE IN CR.NO.65/2022 PURSUANT TO FIR DATED
24.05.2022 AGAINST THE AFORE MENTIONED PETITIONER
WHO ARE ARRAYED AS ACCUSED NO.1-3 FOR THE OFFENCE
P/U/S.498-A, 354-A R/W SEC.34 OF IPC AND SEC.3, 4 OF DP
ACT PENDING BEFORE THE Ld.VII ACJ AND JMFC MYSURU.

THIS CRIMINAL PETITION, COMING ON FOR ADMISSION,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.104/2023, pending before the VII A.C.J. and JMFC, Mysuru, registered for the offences under Sections 498A and 354A r/w. 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

NC: 2024:KHC:21672

2. Learned counsel for the petitioners and respondent No.2 in unison submit that the parties to the lis have settled their dispute among themselves. The husband and wife were before the family Court in M.C.No.3268/2022 and have decided to obtain a decree of divorce by mutual consent. The parties have parted their ways and filed a memorandum of understanding before the concerned Court, by drawing up certain terms and conditions. One of the conditions of the settlement recognizes the closure of the present proceedings. The parties have also filed a joint affidavit of settlement before

this Court:

3. The joint affidavit of settlement reads as follows:

".....

4. In the said Memorandum of Settlement filed before the Hon'ble Family Court, the following clauses are relevant:

"7. The Petitioner No. 1 agrees to pay a sum of Rs.14,00,000 (Rs.Fourteen lakhs only) towards permanent alimony to the Petitioner no.2, by way of two Demand Drafts as follows:

a. Demand draft bearing no.870293 dated 4/6/2024 for a sum of Rs.9,15,000/-

NC: 2024:KHC:21672 (Rs.Nine Lakhs Fifteen Thousand Only), drawn on UCO bank, Banashankari branch.

b. Demand draft bearing no.155327 dated 4/6/2024 for a sum of Rs.4,85,000/- (Rs.Four Lakhs Eighty Five Thousand Only), drawn on ESAF bank, Banashankari branch.

The said demand drafts shall be payable at the time reporting settlement before this Hon'ble Court.

8. The Petitioner No. 2, subsequent to passing of the decree of divorce agrees to withdraw the Crl Misc 486/2023, filed under Domestic Violence Act, pending before II JMFC Court Mysore and also agrees to co-operate in quashing/compounding Crl Petition 11112/2023 pending before the Hon'ble High Court of Karnataka at Bangalore. The parties hereby agree to cooperate in compromising/compounding/quashing any other proceedings pending against each other and their families."

5. Accordingly, the Petitioner No. 1, as undertaken above has already handed over the afore-mentioned Demand Draft's obtained in favour of the Respondent No.2 and the Respondent No.2 has accepted the said Demand Drafts and no further claims remain between the parties to the proceedings before any forum.

6. We submit that the above terms and conditions are arrived with full consent of us and in order to amicably resolve the differences between us. Thus, we hereby undertake to abide by the terms and conditions set forth and that this would be the full and final settlement between the parties.

7. In view of the said settlement, we i.e., the Petitioner Nos.1-3 and the Respondent No.2 herein respectfully pray that this Hon'ble Court may be pleased to pass an Order quashing the entire

proceedings in C.C No.104/2023, arising out of FIR filed on 24/05/2022 against the petitioner's No. 1, 2 and 3 herein who have been arraigned as the Accused No.1, 2 and 3 for the alleged offences punishable u/s. 498(□, 354(A) r/w section 34 of IPC NC: 2024:KHC:21672 and Section 3 and 4 of the Dowry Prohibition Act, 1961 pending before the VII Addl. Senior Civil Judge and JMFC, Mysuru, in the interest of Justice which has been registered against the Petitioners herein." Though the offences alleged against the petitioners in the case at hand inter alia is one punishable under Section 498A of the IPC, since it is a marital dispute between the husband and wife and now, they have arrived at settlement and parted their ways, I deem it appropriate to accept the joint affidavit of settlement and terminate the proceedings against the petitioners, as the allegations are not against the State.

4. For the aforesaid reasons, I pass the following:

ORDER

- (i) The criminal petition is disposed.
- (ii) The proceedings in C.C.No.104/2023, pending before the VII A.C.J. and JMFC, Mysuru, stand quashed.

Sd/-

JUDGE NVJ

Girish. A. V vs Nandini. B. J on 27 March, 2024

Author: K.Natarajan

Bench: K.Natarajan

-1-

NC: 2024:KHC:13011
CRL.P No. 11141 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 11141 OF 2022

BETWEEN:

GIRISH. A. V.
S/O VENKATESHAPPA,
AGED ABOUT 39 YEARS,
R/A NO.160, 1ST FLOOR, 2ND CROSS,
3RD MAIN, ANDRAHALLI MAIN ROAD,
1ST BLOCK, 'D' GROUP LAYOUT,
LINGADHEERANAHALLI,
BANGALORE - 560 091.

...PETITIONER

(BY SRI. VISHNU HEGDE, ADVOCATE)

AND:

1. NANDINI. B. J.
W/O GIRISH A V.,
AGED ABOUT 34 YEARS,

Digitally signed by 2. CHARVI A G
VEDAVATHI A K

REPRESENTED BY NATURAL GAUDIAN MOTHER IS

Location: High
Court of
Karnataka

RESPONDENT NO.1

D/O GIRISH A V.,
AGED ABOUT 7 YEARS,
BOTH RESPONDENT RESIDING AT;
R/A NO.69, 2ND MAIN ROAD,
3RD CROSS, 1ST BLOCK,
GNANABHARATHI LAYOUT,
VALAGEREHALLI, BANGALORE - 560 059.

...RESPONDENTS

(BY SRI. PRAKASH K M., ADVOCATE FOR R1;

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 19.04.2022 IN CRL.A.NO.8/2022 PASSED BY THE 8TH ADDL.DISTRICT AND SESSIONS JUDGE BENGALURU RURAL AT BENGALURU, WHICH IS PRODUCED AT ANNEXURE-A AND THE IMPUGNED ORDER DATED 12.01.2022 IN CRL.MISC.NO.535/2019 PASSED BY THE CHIEF JUDICIAL MAGISTRATE BENGALURU RUARL DISTRICT BENGALURU, WHICH IS PRODUCED AT ANNEXURE-B AND ALLOW THE ABOVE PETITION.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This criminal petition is filed by the petitioner under Section 482 of Cr.P.C. for quashing the order dated 19.04.2022 passed by the VIII Additional District and Sessions Judge, Bangalore Rural, Bangalore, in Criminal Appeal No.8/2022 whereby the learned Sessions Judge has confirmed the order dated 12.01.2022 passed by the Chief Judicial Magistrate, Bangalore Rural District, Bangalore, for having allowed I.A. Nos.3 and 5 in Criminal Miscellaneous No.535/2019 and granting interim maintenance of Rs.8,000/- per month to respondent Nos.1 and 2 towards maintenance and Rs.8,000/- per month to respondent No.2 towards educational expenses, till disposal of the petition.

NC: 2024:KHC:13011

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for respondent Nos.1 and 2.
3. The case of the petitioner is that the petitioner married to respondent No.1 on 22.06.2014. Out of the wedlock, respondent No.2 born to them. Due to the family dispute, the couple are residing separately. Therefore, respondent Nos.1 and 2 filed criminal miscellaneous petition under Section 12 of Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as 'D.V. Act') seeking interim maintenance of Rs.30,000/- per month for the day today expenses, till disposal of the petition. After hearing the interim application, the Magistrate allowed same and awarded Rs.8,000/- to respondent Nos.1 and 2 herein towards the monthly maintenance till disposal of the case. It is further directed that the petitioner herein shall pay Rs.8,000/- per month to respondent No.2 towards her educational expenses. Being aggrieved by the order dated 12.01.2022, the petitioner NC: 2024:KHC:13011 herein approached the Sessions Judge under Section 29 of the D.V.

Act by filing an appeal, which also came to be dismissed. Hence, this petition.

4. Learned counsel for the petitioner submits that though the petitioner, being the Mechanical Diploma Holder, was previously working in a company getting the salary of Rs.57,000/- per month, but he lost the job due to filing of the various complaints and litigations against him and attending the Court cases. Presently, the petitioner is not working and he is not having any income and he is unable to pay the maintenance amount. Hence, prayed for allowing the petition and quashing the impugned orders.

5. The learned counsel for the petitioner has further argued that respondent No.1 is working in a college earning the salary of Rs.35,000/- per month, which is admitted by respondent No.1 herself in the cross-examination. Respondents are not staying with the petitioner and the petitioner has been harassed by respondent No.1. Since the NC: 2024:KHC:13011 petitioner has lost livelihood, he is unable to pay the interim maintenance. Therefore, prayed for setting aside the order of maintenance.

6. Per contra, the learned counsel for the respondents has seriously objected the petition and contended that the father of the petitioner, who is Respondent No.1 herein, is the retired police. The father of respondent No.1 had ancestral property and sold the same by giving the share of Rs.25 lakhs to respondent No.1 and the petitioner demanded some amount out of it, which was not paid by respondent No.1, and therefore, the quarrel took place. It is further contended that the child is now studying in a private school, where the annual fee of Rs.1,00,000/- to be paid apart from the food and medical expenses. Therefore, Rs.8,000/- per month awarded by the Magistrate towards educational expenses cannot be sustainable and Rs.8,000/- per month to both respondents towards monthly maintenance also cannot be sustainable. Therefore, prayed for enhancing the said amount and accordingly, prayed for dismissing the petition.

NC: 2024:KHC:13011

7. Having heard the learned counsel appearing for the parties, perused the records.

8. The relationship between the parties is not in dispute. Due to family dispute, the divorce petition between the parties, said to be pending, is dismissed for non prosecution. Respondent No.1 is said to be a graduate and presently working in a private college earning Rs.25,000/- to Rs.30,000/- per month. Further, the child is studying in a school, where the Magistrate has granted Rs.8,000/- per month towards educational expenses. The Magistrate has also granted Rs.4,000/- each to both the respondents towards monthly maintenance. The Magistrate has not awarded any heavy amount for the purpose of maintenance to the respondents herein. Respondent No.1 has claimed Rs.10,000/- per month towards maintenance, whereas the Magistrate has awarded only Rs.4,000/- each per month to both respondents towards maintenance and Rs.8,000/- to respondent No.2 towards educational expenses. Therefore, it cannot be said to be NC: 2024:KHC:13011 exorbitant even though the petitioner said to be earlier earning Rs.57,000/- per month. However, in respect of respondent No.2, the Magistrate has awarded Rs.8,000/- per month towards educational expenses, which comes to Rs.96,000/- per annum. Now, the child is studying in a private school, where the

school fees is Rs.70,000/- . Now, considering the facts and circumstances of the case and presently looking to the fact that petitioner is not working anywhere and not earning, I am of the view that the educational expenses, shall be reduced from Rs.8,000/- per month to Rs.5000/- per month.

9. In the result, I pass the following order:

- (i) The criminal petition is allowed in part.
- (ii) The grant of interim maintenance of Rs.8,000/- to both respondents shall remain same.
- (iii) The grant of Rs.8,000/- per month to respondent No.2 towards educational expenses is reduced to Rs.5,000/-

per month.

NC: 2024:KHC:13011

- (iv) If any amount already paid by the petitioner shall be adjusted towards the arrears.
- (v) The petitioner shall deposit the entire arrears within six weeks from the date of the receipt of the copy of this order.
- (vi) The learned counsel for the respondents submits that, after filing of the petition, the petitioner has transferred the property, which stood in his name, to his father. The same shall be considered by the trial Court during the trial.

Sd/-

JUDGE CS CT:SK

Ishrath Begum And Ors vs Dr. Safa Fatima on 27 June, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

-1-

NC: 2024:KHC-K:4348
CRL.P No. 200728 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO.200728 OF 2023 (482)
BETWEEN:

1. SMT. ISHRATH BEGUM
W/O MD. MAHMOOD
AGE: 60 YEARS
OCC: HOUSEHOLD
R/O. HOUSE NO.7-4-71,
RAWAHEL GALLI
FORT ROAD BIDAR
TQ: AND DIST: BIDAR-585 401

2. HAJIRA PRAVEEN
W/O MD. SAJEED
AGE: 42 YEARS
OCC: HOUSEHOLD
R/O. HOUSE NO.6/4/66
AT. BIDAR-585 401.

Digitally
signed by
SHILPA R
TENIHALLI
Location:
HIGH
COURT OF
KARNATAKA

3. ZAINAB W/O MERAJ
AGE: 39 YEARS
OCC: HOUSE HOLD
R/O. HOUSE NO.11-19-194
BHAGAT SINGH NAGAR
SARUN NAGAR
LB NAGAR

RANGAREDDY NAGAR
ANDRA PRADESH-501 218

4. ALMAS D/O MD. SAJEED
AGE: 21 YEARS
OCC: STUDENT
R/O. HOUSE NO.6/4/66

-2-

NC: 2024:KHC-K:4348
CRL.P No. 200728 of 2023

AT. BIDAR-585 401

5. RUQIYA D/O MD. SAJEED MINOR
UNDER GUARDIAN
RESPONDENT NO.2 HAJIRA PRAVEEN
W/O MD. SAJEED
R/O. HOUSE NO.6/4/66
AT. BIDAR585 401.

...PETITIONERS

(BY SRI LIYAQAT FAREED USTAD, ADVOCATE)

AND:

DR. SAFA FATIMA W/O MD IBRAHIM
AGE: 24 YEARS, OCC: HOUSE HOLD
R/O. HOUSE NO.7-4-71,
RAWAHEL GALLI, FORT ROAD BIDAR
TQ: AND DIST: BIDAR
NOW AT TEACHERS COLONY,
NEAR GURUNANAK PUBLIC SCHOOL
MANHALLI ROAD, BIDAR-585 401.

...RESPONDENT

(BY SRI SANJEEVKUMAR C. PATIL, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
QUASH THE PETITION AND ENTIRE PROCEEDINGS IN
CRIMINAL MIS.1492/2022 FILED BY THE RESPONDENT HEREIN
BEFORE THE CIVIL JUDGE AND JMFC BIDAR U/SEC.12 OF THE
DV ACT, AGAINST THE PRESENT PETITIONERS.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

The petitioners herein, who are respondent Nos.2 to 6 before the Court of Principal Civil Judge and JMFC-II at NC: 2024:KHC-K:4348 Bidar in Crl.Misc.No.1492/2022 are before this Court with a prayer to quash the entire proceedings in the said case as against them.

2. The material on record would go to show that the respondent herein, who is the wife of respondent No.1 in Crl.Misc.No.1492/2022 has initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.Act') and in the said proceedings, she has sought the following reliefs:

- "i. That this petitioner be awarded separate monthly maintenance @ Rs.25,000/- p.m. for herself and Rs.5,000/- p.m. each for her two minor sons namely Asan Ahmed and Aisa Kulsum from the person and property of respondent No.1 as per Section 20 of D.V.Act.
- ii. That this petitioner be awarded separate residence along with all amenities of life either in share household or in a rented house as per Section 19 of the Act.
- iii. That this petition and her children be awarded day to day medical expenses of Rs.1.00 NC: 2024:KHC-K:4348 lakhs from respondent No.1 as per Section 20(b) of the said Act.
- iv. That this petitioner be awarded compensation of Rs.5.00 lakhs on account of bodily mental internal and external injuries given by the respondents as per Section 22 of the Act.
- v. That it be ordered that this petitioner should hold and continue the custody of her two children with her till attaining majority by awarding their custody to her as per Section 21 of the Act.
- vi. That an order of protection be passed restraining the respondents from committing domestic violence with the petitioner and her minor children as per Section 18 of the Act.
- vii. That the costs of petition be awarded.
- viii. That any other relief/s to which the petitioner and her minor children are legally entitled to, may also be awarded."

3. Learned counsel for the respondent fairly submits that a memo has been filed before the Trial Court to delete respondent Nos.3 to 6 in Crl.Misc.No.1492/2022 NC: 2024:KHC-K:4348 and acting upon the said memo, respondent Nos.3 to 6 are already deleted. Therefore, this petition will survive only as against petitioner No.1, who is respondent No.2 in Crl.Misc.No.1492/2022.

4. From the prayers made in the petition filed under Section 12 of the D.V.Act by the respondent herein, it is seen that prayer Nos.(i) to (v) are all against respondent No.1 in Crl.Misc.No.1492/2022, who is the husband of the petitioner in Crl.Misc.No.1492/2022. Prayer No.6 is a general prayer as against all the respondents named in Crl.Misc.No.1492/2022. The learned counsel for the respondent has brought to the notice of this Court that on the basis of the memo filed by the petitioner/wife before the Trial Court, respondent Nos.3 to 6 have been deleted from the array of parties. Since none of the prayers made in the petition is specifically related to petitioner No.1 in the present petition, who is the mother-in-law of the respondent herein, I am of the considered view that she is also not a NC: 2024:KHC-K:4348 necessary party to the impugned proceedings, which is pending before the Trial Court in Crl.Misc.No.1492/2022. If the petitioner in Crl.Misc.No.1492/2022 has thought it fit that respondent Nos.3 to 6 are not necessary parties, I find no reason as to why respondent No.2 in Crl.Misc.No.1492/2022 is a necessary party as the prayer No.6 is a general prayer as against all the respondents in Crl.Misc.No.1492/2022.

5. Under the circumstances, I am of the view that the impugned proceedings as against petitioner No.1, who is respondent No.2 before the Trial Court in Crl.Misc.No.1492/2022 is required to be quashed. Accordingly, following order is passed:

ORDER The criminal petition is partly allowed.

The impugned proceedings pending before the Court of Principal Civil Judge and JMFC-II at Bidar in Crl.Misc.No.1492/2022 as against petitioner No.1, who is NC: 2024:KHC-K:4348 respondent No.2 before the Trial Court in Crl.Misc.No.1492/2022 is quashed.

It is made clear that the proceedings shall continue in Crl.Misc.No.1492/2022 only as against the husband of the respondent herein, who is arrayed respondent No.1 in the impugned proceedings.

Sd/-

JUDGE SRT

Kaushik Banerjee vs Moumita Banerjee on 18 April, 2024

-1-

NC: 2024:KHC:15522
WP No. 7058 of 2024
C/W WP No. 4804 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

BEFORE
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 7058 OF 2024 (GM-FC)
C/W
WRIT PETITION NO. 4804 OF 2024 (GM-FC)

IN W.P.NO.7058/2024

BETWEEN:

KAUSHIK BANERJEE,
S/O. LATE SANTI KUMAR BANERJEE,
AGE ABOUT 47 YEARS,
RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560076.
MOBILE NO.:9886495733.

ALSO AT:

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA
NO.202, NIAGRA, SIDDHA TOWN,
NARAYANPUR,
RAJARHAT, KOLKATA-700 136.
(BY SRI. SHASHI KIRAN V., ADVOCATE) ...PETITIONER
AND:

1. MOUMITA BANERJEE,
W/O. KAUSHIK BANERJEE,
D/O. KALI DAS MUKHERJEE,
AGED ABOUT 44 YEARS,
2. AROHEE BANERJEE,
D/O. KAUSHIK BANERJEE,
AGED ABOUT 8 YEARS,

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NC: 2024:KHC:15522

BOTH RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560 076.

...RESPONDENTS

(BY SRI. ARUN GOVINDARAJ, ADVOCATE FOR R1 AND 2)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE
INDIAN CONSTITUTION PRAYING TO QUASH THE ORDER DTD
29.02.2024 PASSED BY THE II ADDL. PRL. JUDGE, FAMILY
COURT AT BANGALORE, IN C.MISC.NO.699/2022 VIDE
ANNEXURE-A AND ETC.

IN W.P.NO.4804/2024

BETWEEN:

KAUSHIK BANERJEE,
S/O. LATE SANTI KUMAR BANERJEE,
AGE ABOUT 47 YEARS,
RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560076.
MOBILE NO.:9886495733.

ALSO AT:
NO.202, NIAGRA, SIDDHA TOWN,
NARAYANPUR,
RAJARHAT, KOLKATA-700 136.

...PETITIONER

(BY SRI. SHASHI KIRAN V., ADVOCATE)

AND:

1. MOUMITA BANERJEE,
W/O. KAUSHIK BANERJEE,
D/O. KALI DAS MUKHERJEE,
AGED ABOUT 44 YEARS,

-3-

NC: 2024:KHC:15522

WP No. 7058 of 2024

C/W WP No. 4804 of 2024

2. AROHEE BANERJEE,
D/O. KAUSHIK BANERJEE,
AGED ABOUT 8 YEARS,

BOTH RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560 076.

. . . RESPONDENTS

(BY SRI. ARUN GOVINDARAJ, ADVOCATE FOR R1 AND 2)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE INDIAN CONSTITUTION PRAYING TO DIRECT THE II ADDL. PRL. JUDGE, FAMILY COURT AT BENGALURU TO DISPOSE OF THE APPLICATION FILED BY THE PETITIONER UNDER SEC. 91 OF CR.P.C. IN CRL.MISC.NO.699/2022 VIDE ANNEXURE-A DTD 11.10.2023 WITHIN 30 DAYS AND ETC.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

W.P.4804/2024 is filed seeking the Writ of Mandamus directing the II Addl. Principal Judge, Family Court at Bangalore to dispose off the application filed by the petitioner under Section 91 of Cr.P.C. within 30 days. The parties are referred to as husband and wife for the sake of convenience.

NC: 2024:KHC:15522

2. Learned counsel appearing for the respondent submits that the husband had failed to pay maintenance to the respondent No.1/wife and to respondent No.2/adopted daughter who is suffering with health ailments. It is submitted that when he is earning more than an amount of Rs.2,50,000/- per month, without paying the maintenance, he has come up before this Court and stalled the proceedings before the Court below. Considering the submissions made on behalf of both the sides, the Writ Petition is 'disposed off' directing the Court below to decide the application as expeditiously as possible.

3. The W.P. is filed aggrieved by the order passed in Crl.Misc.No.699/2022 dated 29.02.2024 on the file the II Addl. Principal Judge, Family Court at Bangalore on an application filed under Section 18 Read with Section 26 of Protection of Women from Domestic Violence Act by the wife, the Court below had passed an order restraining the husband from committing, aiding or abetting any act of NC: 2024:KHC:15522 domestic violence on the petitioners or any persons who gives petitioners assistance from domestic violence. When this matter came up on 06.03.2024, this Court had passed the following order, "Learned counsel for the petitioner is permitted to take out notice on the learned counsel appearing for the respondents before the Trial Court and shall file a memo in that regard.

Learned counsel for the petitioner submits that the petitioner/husband has been thrown out from the apartment which belongs to him and in respect of which he pays EMI. It is submitted that all his belongings, valuables including passport are in the house. On 18.04.2023, a mail was sent to the petitioner/husband stating that his belongings will be sent through the brother of the wife, but whereas on 22.12.2023, an application is filed before the Court stating that all the belongings of the husband are already with the petitioner.

Learned counsel for the petitioner submits that when the petitioner has filed a petition under Section 340 of Cr.P.C., the Court below NC: 2024:KHC:15522 without considering the said application of the petitioner/husband, impugned order has been restrained him from committing, aiding or abetting any act of domestic violence on the respondents or any persons who gives the respondents assistance from domestic violence and posted the matter for petitioner's evidence. It is submitted that when the wife has approached the Court below with all suppression and misrepresentation of facts, the Court ought not to have considered the application and passed the impugned order.

Considering the submission of the learned counsel for the petitioner, there shall be stay of all further proceedings in Crl.Misc.No.699/2022 dated 29.02.2024 by the II Additional Principal Judge, Family Court, Bengaluru till the next date of hearing.

Post this matter along with WP.No.4804/2024 on 26.03.2024."

4. Notices were served on the respondents and the respondents are represented by the counsel. It is submitted that he is appearing for both respondent Nos.1 and 2. Learned counsel appearing for the petitioner NC: 2024:KHC:15522 submits that the property in which the wife is residing. Infact, it is purchased by the husband and he is paying the EMI's and he has been driven out of the house. Now, all his belongings are in the house and in fact the statements are made before the Court below that all his belongings are already handed over to him. This Court in earlier order dated 18.04.2023, the date is wrongly mentioned as 22.12.2022 instead of 22.12.2023. It is submitted that wife has made a false statement before the Court below as such he has filed an application under Section 340 of Cr.P.C., to initiate the perjury proceedings against the wife.

5. Learned counsel for the respondent submits that they have no objections to hand over the belongings of the petitioner/husband and infact he is the one who is not fulfilling his obligations and he has left both his wife and daughter, the belongings are with the brother.

6. In the light of the submissions made by learned counsel for the respondent that they have no intention to NC: 2024:KHC:15522 keep the belongings of the petitioner. The same are already with the brother of the respondent/wife and they have no objections to give the same to the husband/petitioner.

7. This Court has perused the other part of the order where the Court below had directed the husband to restrain from committing, aiding or abetting any act of domestic violence. This Court finds no reason to interfere with the order. Hence, the Writ Petition is 'disposed off' as follows,

i) The petitioner can take the articles which are lying with the respondent's brother and the respondent shall take all steps to instruct the brother to give the articles mentioned in the e-mail. The articles shall be returned within two weeks from the date of receipt of copy of the order.

NC: 2024:KHC:15522

ii) The Court below shall dispose off the pending application for maintenance within two months from the date of receipt of the copy of the order.

SD/-

JUDGE BN

Mohammad Khadeer B vs The State Of Karnataka on 25 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

- 1 -

NC: 2024:KHC:16766
CRL.P No.13686 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF APRIL, 2024
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO.13686 OF 2023

BETWEEN:

MOHAMMAD KHADEER .B
S/O BAB JAN SAB
AGE 37 YEARS
OCC: GOVT OFFICIAL NON GAZETTED
R/O DHARWAD
Digitally signed DIST DHARWAD - 580011
by RUPA V AND R/OF C3/03, STAFF QUARTER
Location: HIGH HIGH COURT BELUR
COURT OF DHARWAD-580011.
KARNATAKA

...PETITIONER
(BY SRI. PRAVEEN KUMAR G, ADV.,)

AND:

1. THE STATE OF KARNATAKA
BY DAVANGERE WOMEN POLICE STATION
DIST: DAVANGERE-577001
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-01.

2. IRSYAD BANU
AGE 25 YEARS
OCC HOUSEWIFE
R/O NO.153, 16TH CROSS

BASHA NAGARA
TQ DIST DAVANAGERE - 577001.

... RESPONDENTS

(BY SRI. RANGASWAMY R, HCGP FOR R1
SRI. P.M. GOPI, ADV., FOR R2)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
QUASH THE COMPLAINT AND FIR IN CR.NO.167/2023
REGISTERED BY DAVANAGERE WOMEN P.S., FOR THE
OFFENCE P/U/S 66, 67 OF I.T ACT 2008 AND SEC.4 OF
THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON
MARRIAGE) ACT REGISTERED BEFORE THE 2ND ADDL.
CIVIL JUDGE (SR.DN) AND J.M.F.C DAVANAGERE.

THIS PETITION, COMING ON FOR FINAL HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Accused is before this Court under Section 482 of the Criminal Procedure Code, 1973 with a prayer to quash the entire proceedings in Crime No.167/2023 registered by Davanagere Women police station for the offences punishable under Sections 66 and 67 of Information Technology Act (Amendment) 2008 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 pending before the Court of II Addl. Civil Judge (Sr. Dn.) and JMFC, Davanagere.

NC: 2024:KHC:16766

2. Heard the learned counsel for the parties.

3. Learned counsel for the petitioner and learned counsel for the respondent No.2 jointly submit that the dispute between the parties who are husband and wife has been settled and they have decided to live together. They submit that the parties intend to give a quietus to all their pending disputes and they have filed a petition under Section 320(2) read with Section 482 of Cr.P.C. before this Court wherein they have prayed to quash the impugned proceedings. The petition filed by the parties under Section 320(2) read with Section 482 of Cr.P.C. is taken on record.

4. In paragraphs 2 to 5 of the petition filed under Section 320(2) read with Section 482 of Cr.P.C., parties have stated as follows:

"2. The Petitioner and Respondent No.2 are husband and wife and their marriage was performed on 31.07.2016 at H.K.G.N. ShadiMahal, NC: 2024:KHC:16766

Davanagere. After the marriage of 8-9 months the Petitioner starting asking the dowry. Then the Petitioner send the Respondent to his parental home for delivery after that one baby girl born. Then the Respondent and Respondent parents ask so much to Petitioner to bring the Respondent and the baby with him but Petitioner didn't bring with him. Then in the maintenance case the Petitioner says with Respondent to will bring the Respondent with Petitioner to say like this and the Respondent will withdraw the case and then after the case will withdraw by the Respondent. The Petitioner refuse to take the Respondent with him. On 08.11.2023 the Petitioner send a intimation letter to the Respondent through post to appear before the religious center to resolve the dispute between them but the letter will reach to the Respondent on 1.12.2023 in a letter the Petitioner inform to the Respondent to appear on 12.12.2023 at between 10:00 AM to 12:00 PM before the Darul Khaja Committee. But on said date the Respondent not appear before said committee. At 1.06 PM the Petitioner contact through phone call and ask to the Respondent, on what time you will be appear before this committee but the Respondent said that am not interested to appear there to resolve the dispute. Then the Petitioner has no way to resolve the dispute and restart the marital life so the Petitioner NC: 2024:KHC:16766 at 1:16 PM pronounce a single Talak before 3 witnesses, then the Petitioner informed to the Respondent about the pronouncement of single Talaq by phone call before 3 witnesses. On that day the Iddat period will start but during the pendency of the Iddat period the Respondent know her mistake and scare about the lost her wife rights in her husband home, so she came to the mediation with her father i.e., Abdul Rehaman but unfortunately the mediation will failure because of her father's interference. Then on 30.03.2024 once again after the completion of the iddat period the respondent came with her counsel in domestic violence case and request with the Petitioner to restart the new marital life once again and settlement the all dispute between us once for all in all cases the present petitioner also agreed for that. Then the Respondent and Petitioner also agreed for that then the Respondent and the Petitioner are all take back the Complaint which ever they earlier lodge against them and their family members. The Petitioner inform to the Respondent about the present situation of the marital life and Talaq. The Petitioner approached to the religious committee to discuss about the Talaq before the compromise they ask before religious committee according to muslim personal law. If this Talaq will legal under muslim personal law and my Talaq was valid or not under NC: 2024:KHC:16766 sharia law and muslim personal law. Then the Darul Khaja Committe on 13.03.2024 they give a letter to the Petitioner that the Talaq was valid because the iddat period was completed on 12.03.2024 so this talaq will become valid under muslim personal law. The Petitioner approached to the Respondent they told about the letter given by the committee for his request regarding the Talaq valid letter. The Petitioner inform each and every situation to the Respondent and her family and they also agreed for the same.

3. That as per compromise and settlement before Hon'ble trial Court in D.V. Case, the petitioner is ready to bring the respondent with him.

4. Further the complainant submitted that I and my family members are themselves they approached to Darul Khaja Committee and we give a letter and we clear about letter within 30 days of this judgment. Whichever they given regarding talaq, regarding the clarification the petitioner didn't interference for my clarification letter before Darul Khaja Committee.

5. Further the Complainant/Respondent No.2 submits that before Hon'ble court that this compromise petition was prepared as per the instruction of me and my husband. The Respondent No.2 submits that I have no object to quash the NC: 2024:KHC:16766 Complaint and FIR so now I will-fully come far-word to made this compromise. Further, later discuss with all I know the small dispute will spoil my marital life now I realize my mistake and ready to rejoin the marital life once again with my husband to restart the marital life because of my egoistic nature I didn't understand the intention of the Petitioner I registered a complaint against Accused but there is no enmity or grudge against the said Accused/Petitioner no.1. Now to maintain the peace and balance in the society and to be continued good cordial relationship the Petitioner and the Respondent so to settle the dispute once for all, hence the Petitioner and Respondent jointly submits the present compromise petition."

5. The Hon'ble Supreme Court in 'RAMGOPAL AND ANR. Vs. STATE OF MADHYA PRADESH' (2022) 14 SCC 531 has observed that notwithstanding the limitations provided under Section 320 of Cr.P.C., the High Court can exercise its inherent powers under Section 482 of Cr.P.C. and quash criminal proceedings registered for non-compoundable offences considering the nature of NC: 2024:KHC:16766 allegations, gravity of offence and the nature of settlement arrived at between the parties.

6. In the present case, the allegations made against the petitioners are purely private in nature and the parties have stated in their affidavit that the settlement arrived at between the parties is voluntary, without there being any undue influence and coercion. The parties who are present before the Court are identified by their respective advocates. Considering the nature of allegations, gravity of offence and the nature of settlement arrived at between the parties, I am of the opinion that it is a fit case wherein this Court is required to exercise its inherent powers under Section 482 of Cr.P.C. in order to do complete justice to the parties.

7. Accordingly, petition is allowed. The entire proceedings in Crime No.167/2023 registered by Davanagere Women police station for the offences punishable under Sections 66 and 67 of Information NC: 2024:KHC:16766 Technology Act (Amendment) 2008 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 pending before the Court of II Addl. Civil Judge (Sr. Dn.) and JMFC, Davanagere is quashed.

Sd/-

JUDGE RV

Mr Kukatla Charan Kumar vs State By Yelahanka Police Station on 19 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 3660 OF 2024
BETWEEN:

1. MR. KUKATLA CHARAN KUMAR,
S/O K. CHIRANJEEVULU,
AGED ABOUT 34 YEARS,
NO.131, GROUND FLOOR,
BABA NAGARA, 2ND MAIN,
BAGALURU, YELAHANKA,
BENGALURU,
KARNATAKA - 560 064.

2. MR. K. CHIRANJEEVULU,
S/O LATE K. ETHIRAJULU,
AGED ABOUT 60 YEARS,
NO.28-1241/3A,
NEW BALAJI COLONY,

Digitally
signed by
PAVITHRA N
Location:
High Court of
Karnataka
NEAR RTC DEPO ROAD,
CHITTOOR, ANDHRA PRADESH - 517 001.

3. MRS. K. NIRMALA,
W/O K. CHIRANJEEVULU,
AGED ABOUT 55 YEARS,
NO. 28-1241/3A,
NEW BALAJI COLONY,
NEAR RTC DEPO ROAD,

CHITTOOR,
ANDHRA PRADESH - 517 001.

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

4. MR. K. CHAITANYA CHOWDARY,
S/O K. CHIRANJEEVULU,
AGED ABOUT 33 YEARS,
NO. 28-1241/3A,
NEW BALAJI COLONY,
NEAR RTC DEPO ROAD,
CHITTOOR,
ANDHRA PRADESH - 517 001.

PETITIONERS

(BY SRI. G.R. LAKSHMIPATHY REDDY, ADVOCATE)

AND:

1. STATE BY YELAHANKA POLICE STATION,
BANGALORE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 064.

2. MRS. R SNEHA,
W/O KUKATLA CHARAN KUMAR,
AGED ABOUT 29 YEARS,
NO.131, GROUND FLOOR,
BABA NAGARA, 2ND MAIN,
BAGALURU YELAHANKA,
BENGALURU,
KARNATAKA - 560 064.

... RESPONDENTS

(BY SMT. K.P. YASHODA, HCGP FOR R1;
SMT. AMRITHA MANCHANDA, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.7196/2023
REGISTERED BY YELAHANKA P.S. / 1ST RESPONDENT FOR THE
OFFENCE P/U/S 498(A),34,498A,504,506 OF IPC AND SEC.3,4
OF D.P ACT NOW PENDING ON THE FILE OF 37TH A.C.M.M
BENGALURU.

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Smt.Amritha Manchanda, learned counsel has filed vakalath on behalf of respondent No.2.

Same is taken on record. She submits that respondent No.2 has no objection to grant the prayer made in this petition.

Accused Nos.1 to 4 are before this Court under Section 482 of Cr.P.C, with a prayer to quash the entire proceedings in Crime No.382/2022 registered by Yelahanka Police Station, Bengaluru which is now pending before the Court of 37th Additional CMM Court, Bengaluru City, in C.C.No.7196/2023 for the offences punishable under Sections 498(A), 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

2. Heard the learned counsel appearing for the parties.

3. Learned counsel appearing for the petitioners and learned counsel appearing for respondent No.2 submit that the dispute between the parties has been amicably settled before the Mediation Centre at Bengaluru in M.C.No.55/2023 and the terms of settlement is reduced under memorandum of settlement dated 16.03.2024 and the same is also submitted NC: 2024:KHC:15643 before the jurisdictional Family Court in M.C.No.55/2023. The marriage between petitioner No.1 and respondent No.2 has been dissolved by a decree of divorce. They accordingly pray that the prayer made in this petition may be allowed.

4. The memorandum of settlement filed before the Court of IV Additional Principal Judge, Family Court at Bengaluru, in M.C.No.55/2023 dated 16.03.2024 is produced at Annexure-F along with the petition. The parties, who are present before this Court are identified by their respective advocates. In paragraph Nos.2 to 10 to the said memorandum of settlement, it is stated as follows:

"2. The petitioner and the respondent state and admit that due to irreconcilable differences and incompatibility of temperaments, they started living separately from 19.06.2022. There is absolutely no chance of reunion between them, without reference to the allegations in the petition the petitioner and the respondent agree that their marriage be dissolved by a decree of divorce.

3. The petitioner and the respondent state that they have a daughter from the said marriage by name Kum. K. Shanvija Priyaa, aged about 7 years, presently under the care and custody of the petitioner/mother and shall continue to be in her custody in future, for which the respondent/father has no objection. The NC: 2024:KHC:15643 respondent/father has given up his visitation rights over the minor daughter.

4. The respondent has agreed to pay sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the petitioner towards permanent alimony/maintenance in full and final settlement of all her claims and also towards maintenance of the minor daughter by

way or demand draft bearing No.628866, dated 11.03.2024, drawn on Punjab National Bank, Marathahalli Branch, Bengaluru before the Hon'ble Court at the time of reporting this settlement. The petitioner has agreed for the same.

5. It is agreed that the respondent shall execute a registered Gift Deed in respect of site bearing No.57 Katha No.306/296/57 situated at Sathnanur Village, Jala Hobli, Bengaluru Taluk, in favour of their minor daughter Kumari. K. Shanvijapriyaa within 30 days from the date of this settlement/agreement. The petitioner being the Guardian of the minor daughter shall represent her and bear the cost of registration charges of such registration. The respondent shall deliver all the original documents on the date of registration of Gift Deed. The petitioner agree and undertake not to sell / alienate the said site gifted to her daughter until their daughter attains the majority.

6. The petitioner agree and admit that the respondent has gifted gold ornaments worth about 10 lakhs, and the same are in her custody. In view of settlement, the respondent has no objection for the petitioner to retain the same and undertakes that he shall not make claim against the same in future.

NC: 2024:KHC:15643

7. In view of this settlement, the petitioner has agreed to withdraw Crl.Misc.184/2022, filed against the respondent and others under Section 12 of the Protection of Women and Domestic Violence Act, as not pressed.

8. The petitioner also agrees and undertakes to cooperate in closing / quashing C.C.No.7196/2023 pending before 37th ACMM, Bengaluru filed against the respondent and other under section 498-A, 504, 506 r/w 34 of IPC and Sections 3 and 4 of D.P.Act in the Criminal Petition to be filed by the respondent and other under Section 482 of Cr.P.C. before the Hon'ble High Court of Karnataka, Bengaluru, in accordance with law, upon execution of the registered Gift Deed in favour of their minor daughter.

9. The petitioner and the respondent state that apart from the above, they have no other claims of whatsoever against each other with regard to permanent alimony/maintenance either for the past, present or future and also have no claims over the movable or immovable properties belonging to each other either existing at present or to be acquired in future.

10. In view of this settlement, both the parties hereby unconditionally withdraw all the allegations made against each other either in petition or in connected cases."

5. Learned counsel for respondent No.2 submits that the terms of the memorandum of settlement dated 16.03.2024 has been completely complied with by the petitioner herein. She submits that respondent No.2 has received all the originals NC: 2024:KHC:15643 of the title documents. She also

submits that respondent No.2 has filed affidavit stating that she has no objection to grant the prayer made in this petition. The said affidavit filed before this Court is taken on record.

6. Considering the nature of allegations, the nature of settlement arrived between the parties and also having regard to the fact that the offences are compoundable in nature, I am of the view that the prayer made in this petition requires to be allowed. Accordingly, the following order:

7. Petition is allowed. The entire proceedings in Crime No.382/2022 registered by Yelahanka Police Station, Bengaluru which is now pending before the Court of 37th Additional CMM Court, Bengaluru City, in C.C.No.7196/2023 for the offences punishable under Sections 498(A), 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, is quashed as against the petitioners.

Sd/-

JUDGE MKM

Mr.Shuhail Shariff vs State Of Karnataka on 3 June, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:19007
CRL.P No. 4693 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4693 OF 2024

BETWEEN:

1. MR. SHUHAIL SHARIFF
S/O MOHAMMED SHARIFF
AGED ABOUT 43 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID,
K G HALLI,
BANGALORE-560 045.

2. PARVEEN TAJ,
W/O MOHAMMED SHARIF,
AGED ABOUT 60 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID

Digitally signed
by NAGAVENI
K G HALLI,
BANGALORE-560 045.

Location: HIGH
COURT OF
KARNATAKA

3. AMREEN TAJ
W/O ANJUM PASHA
AGED ABOUT 36 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID

K G HALLI
BANGALORE-560 045

...PETITIONERS

(BY SRI. SHARAN L JAIN., ADVOCATE)

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NC: 2024:KHC:19007

CRL.P No. 4693 of 2024

AND:

1. STATE OF KARNATAKA
BY EAST ZONE WOMEN
POLICE STATION,
REPRESENTED BY HCGP,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.
2. NANCY AROKIADASS,
W/O SUHAIL SHARIFF
AGED ABOUT 31 YEARS
NO.238, KHB COLONY
COX TOWN
BANGALORE-560 005

... RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1;
SRI. YASEEN SALEHA, ADV. FOR R2)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN CR.NO.0078/2019
REGISTERED BY THE 1ST RESPONDENT AGAINST THE
PETITIONER REGISTERED AT C.C.NO.1042/2020 WHICH IS
PENDING ON THE FILE OF THE XI ADDL. CMM, BANGALORE
FOR THE OFFENCE P/U/S 498(a), 506 OF IPC AND SEC. 3 AND
4 OF DOMESTIC VIOLENCE ACT.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel Sri.Sharan L. Jain, appearing for the petitioners, the learned High Court Government Pleader Sri.P.Thejesh, appearing for respondent No.1 and the learned counsel Sri.Yaseen Saleha, appearing for respondent No.2.

NC: 2024:KHC:19007

2. The petitioners are before this Court seeking the following prayer:

"a To quash the entire proceedings in Crime No.0078/2019 registered by the 1st respondent against the petitioner registered at CC No.1042/2020 which is pending on the file of the XIth additional chief Metropolitan Magistrate, Bangalore for the Offence Punishable under Section 498(a), 506 of IPC and section 3 & 4 of Domestic Violence act.

b. To grant such other relief or reliefs as this Hon'ble Court be pleased to grant, in facts and circumstances of the case."

3. The learned counsel for the parties would submit that the matter has been settled between them and have filed such joint affidavit of compromise. The same read as follows:

"JOINT AFFIDAVIT I, Mr.Shuhail Shariff, Aged 44 years, S/o Mohammed Shariff, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I, Parveen Taj, Aged about 56 years, W/o Mohammed Ashraf, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I Amreen Ayesha M, Aged about 36 years, W/o Anjum Pasha, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I, Nancy Arokiadass, Aged about 31 years, D/o Arokiadass, No.238, KHB Colony, Cox Town, Bangalore - 560005. We do hereby solemnly affirm and states and oath as follows:-

NC: 2024:KHC:19007

1. I Mr.Suhail Shariff H R, accused/petitioner no.1. I, Parveen Taj the accused/petitioner no.2. I, Amreen Taj the accused/petitioner no.3 in the above case and I, Nancy Arokiadass respondent no 2/complainant in the above case, we are fully conversant with the facts of the case and we are swearing to this affidavit.

2. We submit that, we have filed an application u/s 320(2) CRPC to compound the offences in the above criminal petition.

3. We submit that, we have settled our disputes and matter has been compromised between us in the presence of the well-wisher.

4. We submit that, we have settled our disputes with own will and wish without any influence or force.

What is stated above is true and correct to the best of my knowledge, information and belief.

wherefore we must respectfully prayed that this Hon'ble may pleased to:

1. Allow application filed u/s 320 of CrPC and permit us compound the offences.

2. Pleased to quash the entire case in CC No.1042/2020 for the offences punishable under Section 498(a), 506 of IPC and sections 3 & 4 of the Domestic Violence Act, pending before the 11th Additional Chief Metropolitan Magistrate, Bangalore in the interest of justice and equity."

NC: 2024:KHC:19007

4. In the light of the settlement arrived at between the parties and the offences not being against the State, I deem it appropriate to accept the application seeking compounding of the offence and terminate the proceedings, qua the petitioners.

5. For the aforesaid reasons, the criminal petition is disposed. The proceedings in C.C.No.1042/2020 pending on the file of the XI Additional Chief Metropolitan Magistrate, Bangalore stand quashed.

Sd/-

JUDGE KG

Mrs. Bobby Elizabeth Rajeendran vs Mr. Rajeendran P on 20 March, 2024

Author: H.P.Sandesh

Bench: H.P.Sandesh

-1-

NC: 2024:KHC:11400
CRL.RP No. 19 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO.19 OF 2024

BETWEEN:

1. MRS. BOBBY ELIZABETH RAJEENDRAN,
AGED ABOUT 53 YEARS,
R/AT FLAT NO.B-006, SPARTA I,
PRESTIGE ACROPOLIS APARTMENT,
HOSUR ROAD, KORAMANGALA,
BENGALURU-560029

...PETITIONER

(BY SMT. RASHMI GEORGE, ADVOCATE)

AND:

1. MR. RAJEENDRAN P.,
AGED ABOUT 54 YEARS,
R/AT FLAT NO.B-006, SPARTA I,

Digitally signed
by SHARANYA T
Location: HIGH
COURT OF
KARNATAKA

PRESTIGE ACROPOLIS APARTMENT,
HOSUR ROAD, KORAMANGALA,
BENGALURU-560029

...RESPONDENT

(BY SRI. S.M. ANEES AHMED, ADVOCATE)

THIS CRL.RP. IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 31.10.2023 PASSED IN CRIMINAL APPEAL NO.1054/2023 IN THE COURT OF LIX ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU BY ALLOWING THIS PETITION.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:11400
CRL.RP No. 19 of 2024

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This Court earlier heard both the counsel in part and directed the respondent to pay all the arrears of maintenance as on date. Inspite of the said direction, the respondent has not complied with the order of this Court. The learned counsel for the respondent has placed some documents with regard to the application, orders and objections filed before the Trial Court, but not made any statement with regard to compliance of the order of this Court dated 13.03.2024, wherein the respondent was directed to pay the arrears of maintenance as on today within one week.
3. Now, the learned counsel for the petitioner has filed a memo of calculation of arrears of maintenance with details of payments made from 17.12.2022 to 04.01.2024 i.e., payment of Rs.5,000/- each made on 17.12.2022, 23.12.2022, 28.12.2022, 30.12.2022 and 02.01.2023, Rs.45,000/- paid on 11.01.2023, Rs.25,000/- paid on 17.02.2023, 20.07.2023, 18.08.2023 and 11.09.2023, Rs.2,000/- paid on 06.12.2023 and NC: 2024:KHC:11400 Rs.1,000/- paid on 04.01.2024. In all, an amount of Rs.1,73,000/- is paid and balance arrears is Rs.2,27,000/-.
4. The learned counsel for the respondent submits that the entire arrears is paid and when this Court specifically asked for having made the payment, no answer from the mouth of the learned counsel for the respondent.
5. Now this Court has to consider the order passed by the Trial Court when an application was filed before the Trial Court under Sections 23(2) and 19(1)(b) of the Protection of Women from Domestic Violence Act, 2005 ('PWDV Act' for short) praying the Court to order directing the respondent to remove himself from the shared household at Flat No.B-006, SPARTA I, Prestige Acropolis Apartment, Hosur Road, Koramangala, Bengaluru - 560 029 and creating any impediments to the peaceful and safe living of the petitioner and children in the shared household during the pendency of the petition. In support of the application, an averment is made that the petitioner, respondent and children were living in the above said flat i.e., jointly owned and purchased with mutual contribution of the respondent and the petitioner. It is also her case that the respondent's cruelty and harassment towards the petitioner and NC: 2024:KHC:11400 even the girl children had gone to

the extreme of denying the girl children of even basic school education by refusing to pay the school fees for the last three years and both the younger daughters are still not attending any normal school. Due to this denial of education and other social stigmas associated when living in a posh apartment without going to school, the girl children have become mental wrecks and are exhibiting suicidal tendencies and pleas for medical and psychological treatment were denied by the respondent.

6. The respondent has not paid the interim maintenance for the month of March 2023, April 2023 and May 2023 and also has not paid any fees towards the education expenses. The respondent is not cooperating and taking any initiatives to rejoin the second daughter Miss Ranjana Angel, after five years of non schooling, to some online school yet and is not allowing the younger daughter even to use the computer for attending online classes. Inspite of being aware of the interim orders, the respondent was continuously creating havoc and abusing her and she was forced out of the residence on 22.02.2023 and currently she has taken shelter in a paying guest accommodation temporarily. That on 20.03.2023, the girl children also fled out of the house because the children were NC: 2024:KHC:11400 unable to bear the harassment and havocs in the house, finally culminating in a complaint with ref No.LPT No.37/2023 in the Adugodi police station at night around 8.00 p.m. based on the complaint filed by the petitioner citing the breach of the protection orders by this Court. The Adugodi police did not take necessary action to enforce the protection orders citing its family issue, but only took an undertaking from the respondent that he will take care of the children. The respondent has already thrown her out from the jointly owned shared household, but the children were not willing to go back with the respondent being utterly scared of the respondent due to the violence behaviour and shouting in the police station. In the police station the respondent also misbehaved with her lawyer and the police also registered an NCR 77/2023. The respondent sold her car for Rs.4.5 lakhs without her knowledge. The children are now being prevented from calling her from their phone and keeping in touch with her by the respondent and threatening them to cut off all connections with her. On 26.05.2023, her children called and said that they want to see her, for that she went there and saw that children living without any proper food and cleanliness. It is further alleged that her daughter Ranjana Angel is having suicidal tendencies and she NC: 2024:KHC:11400 attempted to suicide on 06.01.2023. The children are making distress phone call to her to find some ways to maintain their mental stability and hence application is filed.

7. The respondent appeared and filed objections denying all the averments made in the application and contended that the present application is based on the report of Protection Officer and the said report is obtained by the petitioner by coercing the children without any direction from the Court, which is an abuse of law. The report filed by the Protection Officer is within malafide intention by threatening and scaring the children. Hence, the same cannot be considered. He has further contended that the respondent and his children are happily living in the shared household and the respondent is taking good care of the children. He has never harassed or ill treated the petitioner or the children. He submits that the petitioner herself has deserted the children and has started residing separately at a paying guest accommodation at Koramangala and she is also working for the same paying guest accommodation. It is also the contention that the petitioner has not visited the house of the respondent and has also neglected to take care of the children since third week of

February 2023. It is also the contention that when he had gone out for the work, NC: 2024:KHC:11400 the petitioner without permission of the respondent or the Court, entered the house of the respondent and pressurized the children and obtained their statement. He submitted that he has filed a separate application to appoint the Court Commissioner to record the statement of the children in order to ascertain the true facts.

8. The Trial Court having considered the application and the objections filed by both of them, taken note of the averments made by the respective parties and in paragraph No.7 taken note of the definition of 'shared household' for a proper consideration. The Trial Court in paragraph No.8 taken note of the relationship defined under Section 2(f) of the PWDV Act and also taken note of the premises in which they were residing is purchased in joint name. Both the petitioner and the respondent have submitted that their daughters went missing on 20.03.2021 due to an argument with the respondent and a missing compliant was filed by the respondent. The Trial Court also taken note of that as per the scheme of the act, the Magistrate if he is satisfied the application *prima facie* discloses that the respondent is committing or has committed an act of domestic violence or there is likelihood of such violence and he may grant an order against the respondent on the basis of an NC: 2024:KHC:11400 affidavit of aggrieved person. If the domestic violence has taken place, he can pass residence orders restraining the respondent from dispossessing the aggrieved person or in any manner disturbing her peaceful household or direct the respondent to remove himself from the shared household, or pass an order restraining from selling the suit property. It is not in dispute that this Court has granted ex parte protection order on 02.01.2022 against the respondent directing him not to dispossess the petitioner from the shared household, but inspite of the same, the petitioner is currently residing in a paying guest accommodation. The dispute is whether the respondent had driven her out of the shared household or whether the petitioner herself has walked out of the house and the Trial Court comes to a conclusion that the same has to be decided in a full fledged trial. Whether the daughters were coerced and pressurized by the petitioner to give false statement implicating the respondent before the Protection Officer is also to be considered in a full fledged trial.

9. Having taken note of the very contentions of the respective parties, the Trial Court comes to the conclusion that the statement of the elder daughter before the police, report of the Protection Officer, conduct of the elder daughter in NC: 2024:KHC:11400 attempting to commit suicide, neglectful conduct of the respondent in not paying the outstanding fees and interim maintenance, it is *prima facie* clear that the relationship between the respondent and the two daughters is antagonistic. Admittedly, the respondent is the only earning member, whereas the petitioner and two children have no financial source to maintain themselves. Hence, the Trial Court passed an order for over all well being of the children and directed the respondent to remove himself from the shared household and allowed the application filed under Section 23(2) and 19(1)(b) of the PWDV.

10. Being aggrieved by the said order, an appeal is filed in Criminal Appeal No.1054/2023. The Appellate Court having considered the material on record and also the earlier protection order and having considered the provisions of Sections 23(2) and 19(1)(b) of the PWDV Act, which has been discussed in paragraph No.18, comes to the conclusion in paragraph No.19 that the Trial Court has committed an error in passing the order of removal of the appellant from the flat. The Appellate

Court observed that if any domestic violence has taken place, the Magistrate can pass residence order restraining the respondent from dispossessing the aggrieved person or in any manner

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NC: 2024:KHC:11400 disturbing her peaceful household or direct the respondent to remove himself from the shared household, or passing an order restraining from selling the suit property. It has also taken note of the fact that the Court has granted ex parte protection order on 02.01.2022. Whether the respondent/husband had driven her out of the shared household or whether the petitioner/wife herself has walked out of the house, is a question to be decided in a full fledged trial. However, taking note of the order passed by the Trial Court, the Appellate Court comes to the conclusion that the property i.e., flat where the husband and wife were living, is a jointly purchased property and it requires full fledged trial for consideration of allegations made against each other. The Appellate Court also taken note of the allegations made by each of the parties and according to the respondent, the wife has occupied the house belonging to him and she is not allowing him to enter the house and threatening to file another complaint before the police and he has no enough money to have an alternative accommodation. It is also observed by the First Appellate Court that the wife has been misusing the orders passed by the Trial Court, as contended by the respondent. Taking note of the same, the Appellate Court made an observation that both the parties have ample opportunity to put

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NC: 2024:KHC:11400 forth their defence before the Trial Court during trial. In such condition, if the appellant/husband is ordered to go out of their residential house where the parties were/are living, it requires a full dressed trial as observed by the Trial Court and therefore interference is necessary and the impugned order and the challenge deserves to be set aside and reversed the order. Hence, the present revision petition is filed.

11. The main contention of the learned counsel for the revision petitioner in this petition is that when the protection order was given by the Trial Court, the same has been misused. The respondent is not taking care of the petitioner and children, who are pursuing their education and in view of the non-payment of educational fee, the daughter who went to Canada could not continue her education and also not making any payment towards school fee and unable to send other daughter also to school. The learned counsel would contend that inspite of the order is passed to pay maintenance of Rs.25,000/- per month, the same is not paid and still Rs.2,27,000/- is due as on today. The First Appellate Court committed an error and only discussed the order passed by the Trial Court and comes to the conclusion that the matter requires to be tried before the Trial Court. The learned counsel brought to the notice of this Court

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NC: 2024:KHC:11400 the provisions of Section 19 of the PWDV Act and the provision is very clear that while disposing of an application under sub- Section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order directing the

respondent to remove himself from the shared household in terms of Section 19(1)(b) of the PWDV Act. The Trial Court's order is in consonance with Section 19(1)(b) of the PWDV Act. The learned counsel also brought to the notice of this Court Section 23 of the PWDV Act, wherein granting interim and ex parte order in any proceedings before him under this Act, the Magistrate may pass such interim order as he deems just and proper. Hence, the First Appellate Court has committed an error and without any reasons set aside the order of the Trial Court and no discussion was made with regard to threat caused to the petitioner.

12. Per contra, the learned counsel for the respondent would contend that as on today, entire arrears of maintenance is paid. The learned counsel contend that the petitioner herself walked away from the house leaving the children and the report which has been relied upon by the petitioner is created one. The home visit report made by the conservation officer and the children opinion is created for the purpose of driving out the

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NC: 2024:KHC:11400 respondent from the house. The learned counsel would contend that the flat has been jointly purchased and the respondent is not having money to make his other accommodation. The learned counsel would contend that the Appellate Court has taken note of the fact that the case was set out for cross- examination of P.W.1 and almost case is pending for final adjudication and when such being the case, at this juncture, the question of removing the respondent does not arise and the Appellate Court has taken note of the said fact into consideration and passed the order.

13. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, the Trial Court while passing the removal order of the respondent from the flat, taken note of the fact that earlier children went missing in lieu of the strained relationship between the petitioner and the respondent and missing complaint was filed by the respondent. In paragraph No.9, the Trial Court taken note of the scope of Domestic Violence Act and also taken note of the report submitted before the Court with regard to domestic violence and also taken note of the earlier order passed by the Trial Court i.e., ex parte protection order dated 02.01.2022. No doubt, it is the allegation of the petitioner that due to harassment, the

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NC: 2024:KHC:11400 petitioner left the house. The contention of the respondent that the petitioner left the house on her own and staying in paying guest accommodation is also considered by the Trial Court. The conduct of the elder daughter in attempting to commit suicide is also taken note of by the Trial Court while passing an order of removal of the respondent himself from the shared household. The First Appellate Court while reversing the order of the Trial Court, taken note of the protection order as well as allegations made against each other and while passing the order in paragraph No.22, taken note of the complaint filed by the petitioner before the concerned police and also taken note of the fact that the wife has occupied the house belonging to him. In view of the order of the Trial Court, the petitioner is not allowing the respondent to enter the house.

14. When such pleadings are made before the Court and also when there is a report before the Court that there is an act of domestic violence and apart from that, when the daughter also made an attempt to commit suicide, only observation is made that both the parties have ample opportunity to put forth their defence before the Trial Court during trial. No doubt, the matter is still pending for consideration on merits and both are making allegations against each other. The material on record

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NC: 2024:KHC:11400 shows that both of them are living in the same shared household. The material also discloses that the petitioner once left the house and was staying in paying guest accommodation and now in view of the order passed by the Trial Court to remove the respondent from the shared house, she joined the house along with children. The statement of the children was also recorded and to that effect, documents are also produced before the Court and the children's opinion is that they want to stay with their mother and they want to stay away from father and like to live in different house with their mother. When such statement is made by the children, the respondent can make other alternative residence to wife and children, but the same has not been made and even when the Trial Court has granted maintenance and the same is not paid regularly. According to the petitioner, there is an arrears of Rs.2,27,000/- It is also the specific allegation that the respondent has not met the educational expenses of the children and due to the conduct of the respondent, one of the daughter left Canada and not pursued the education. Though this Court directed the respondent to pay the arrears of maintenance, since the petitioner has to take care of herself and two children, who are pursuing their education, the respondent is not making

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NC: 2024:KHC:11400 payment. When this Court asked the respondent to place the document with regard to for having made the payment from September till date, there is no answer from the mouth of respondent. When the respondent is not taking care of the children and not making payment of arrears of maintenance in order to take care of wife and two children, the Appellate Court has not discussed anything about all these aspects while reversing the order of the Trial Court and simply passed an order in coming to the conclusion that the matter has to be decided in a full fledged trial before the Trial Court and committed an error in reversing the order of the Trial Court. The Trial Court has given the reason for invoking Section 19 of the PWDV Act. The very proviso under Section 19(1)(b) of the PWDV Act is clear that the Court can direct the respondent to remove himself from the shared household and the same is in conformity with Section 19 of the PWDV Act. Under Section 23 of the PWDV Act, in any proceedings, the Magistrate can pass such interim order as he deems proper. When the interim order has been passed to pay maintenance of Rs.25,000/- per month, the same is not paid regularly and the petitioner each and every year has to file a petition before the Trial Court for enforcing the same. The Appellate Court without assigning any reasons

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NC: 2024:KHC:11400 reversed the order of the Trial Court and comes to an erroneous conclusion that the matter requires a full fledged trial. The Appellate Court passed the order without

Mrs. Bobby Elizabeth Rajeendran vs Mr. Rajeendran P on 20 March, 2024
application of judicious mind and hence it requires interference of this Court.

15. In view of the discussions made above, I pass the following:

ORDER

- (i) The revision petition is allowed.
- (ii) The order of the Appellate Court dated 31.10.2023 passed in Criminal Appeal No.1054/2023 is set aside.
- (iii) The order passed by the Trial Court is restored.
- (iv) Insofar as the grievance with regard to non-payment of maintenance is concerned, the petitioner can enforce the order of maintenance by filing necessary petition before the appropriate Court.

Sd/-

JUDGE MD

Mrs Dorothy Pinto @ D M Pinto vs Mrs Sheena Nandan on 13 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 4485 OF 2018

BETWEEN:

1. MRS DOROTHY PINTO
@ D M PINTO
WIFE OF LATE P F PINTO
AGE ABOUT 90 YEARS,
RESIDING AT: "DOROTHEA"
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

2. MRS ARLENE PINTO
W/O MR ROHAN RAJU
AGE 54 YEARS,
RESIDING AT:
STANMORE APARTMENTS
NO.2C, VITTAL MALLYA ROAD
BENGALURU-560 001.

3. MR TREVOR PINTO
SON OF THE LATE P F PINTO
AGED 69 YEARS,
RESIDING AT: " TRELKA"
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

4. MR KENNETH PINTO

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA

SON OF THE LATE P F PINTO
AGED 60 YEARS,
RESIDING AT:
PRESTIGE ACROPOLIS APARTMENTS
DELPHI-II
NO.704, NO.20, HOSUR ROAD
BENGALURU-560 029

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NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

5. MRS LISA PINTO
WIFE OF MR KENNETH PINTO
AGED ABOUT 51 YEARS,
RESIDING AT:
PRESTIGE ACROPOLIS APARTMENTS
DELPHI-II,
NO.704, NO.20, HOSUR ROAD
BENGALURU-560 029.

...PETITIONERS

(BY SRI. G. JANARDHANA., ADVOCATE)

AND:

1. MRS. SHEENA NANDAN
DAUGHTER OF MR LESLIE PINTO
WIFE OF MR NANDAN RAJEEV
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

ALSO RESIDING AT:
KALESWARA ESTATE
P.O. BOX NO.50
MUDIGERE POST-577 132
CHICKMAGALURU DISTRICT.

ALSO AT:
402, BLOCK A
SPARTIN HEIGHTS
RICHMOND ROAD
BENGALURU-560 025.

...RESPONDENT

(BY SRI. N. RAVINDRANATH KAMATH., SENIOR COUNSEL
FOR SMT. VANAJAKSHI., ADVOCATE)

THIS CRL.P FILED UNDER SECTION 482 CR.P.C BY THE
ADVOCATE FOR THE PETITIONER PRAYING TO QUASH THE
PROCEEDINGS IN CRL.MISC.NO.96/2018 PENDING ON THE
FILE OF THE METROPOLITAN MAGISTRATE TRAFFIC COURT-1
AT MAYO HALL BANGALORE PUNISHABLE UNDER SECTIONS
12, 18, 19, 20 AND 22 OF PROTECTION OF WOMEN FROM

DOMESTIC VIOLENCE ACT.

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NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

THIS PETITION, COMING ON FOR HEARING, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. After arguing for some time, learned counsel for the respondent submits that the respondent may be permitted to withdraw the Domestic Violence application that has been filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act').
2. In view of the above, the application filed by the respondent under Section 12 of the Act against the petitioners herein shall stand dismissed as withdrawn.
3. As a consequence, this petition which has been filed challenging the cognizance taken from the application filed by the respondent has been rendered infructuous, and is disposed of as having become infructuous accordingly.

Sd/-

JUDGE

Prithviraj Balutagi S/O Ashok Balutagi vs Smt. Sushma W/O Prithviraj Balutagi on 26 June, 2024

-1-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2024
C/W WP No. 104419 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.102446 OF 2023 (482-)
C/W
WRIT PETITION NO.104419 OF 2023

IN CRL.P.NO.102446/2023

BETWEEN:

PRUTHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS, OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.

...PETITI

(BY SRI. NARAYAN V. YAJI, ADVOCATE)

AND:

1. SMT. SUSHMA W/O. PRUTHVIRAJ BALUTAGI,
AGE: 26 YEARS, OCC: ENGINEER,
R/O. NO.1303, ENKAY ASSOCIATES,

ASHPAK

KASHIMSA

MALAGALADINNI

2ND FLOOR, 11TH MAIN ROAD,

SBI STAFF COLONY, HOSAHALLI EXTENSION STAGE-I,

VIJAYANAGARA, BENGALURU-560040.

Digitally signed by ASHPAK
KASHIMSA MALAGALADINNI
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.07.02 15:47:14
+0530

2. THE STATE OF KARNATAKA,
THROUGH THE POLICE INSPECTOR,
WOMEN POLICE STATION,
HUBBALLI-DHARWAD,
REP/BY STATE PUBLIC PROSECUTOR,

OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDING DHARWAD-580011.

... RESPONDENT

(BY SRI. T.R. PATIL, ADV. FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2)

-2-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
PRAYING THAT QUASH THE ORDER DATED 31.08.2023 TAKING
COGNIZANCE OF THE OFFENCE U/SEC.498A, 323, 504, 506 OF IPC
AND U/SEC. 3 AND 4 OF DP ACT AS AGAINST THE PETITIONER BY III
ADDL.CIVIL JUDGE & JMFC, HUBBALLI IN C.C. NO.9802/2023 AND
ALSO QUASH THE ENTIRE CHARGE SHEET AND PROCEEDINGS
PENDING ON THE FILE OF THE 3RD ADDL. CIVIL JUDGE AND JMFC,
HUBBALLI AS IT IS ILLEGAL AND NOT MAINTAINABLE.

IN WP. NO.104419 OF 2023 (GM-FC)
BETWEEN:

1. PRITHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS,
OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.
2. ASHOK
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE
VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
3. SMT. SAROJA W/O. ASHOK BALUTAGI,
AGE: 50 YEARS, OCC: HOME MAKER,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE,
VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
4. KIRAN S/O. ASHOK BALUTAGI,
AGE: 31 YEARS, OCC: SELF EMPLOYMENT,
R/O. BCTSK DESIGN SOFTECH INDIA PRIVATE LTD.,
1ST FLOOR, 3RD MAIN ROAD,
NEAR PARVATHI NAGAR, BELLARY,
DIST: BALLARY-583103,
5. DEVENDRAPPA BALUTAGI
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 63 YEARS, OCC: AGRICULTURIST,

R/O. NO.4/1 NEAR KANAKADASA CIRCLE,
(WARD NO.7), NEAR GOVT. HOSPITAL,
KUSHTAGI, DIST: KOPPAL-583277.

-3-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

6. SMT. SHANKRAMMA BALUTAGI
W/O. DEVENDRAPPALUTAGI,
AGE: 55 YEARS, OCC: HOME MAKER,
R/O.NO.4/1 NEAR KANAKADASA CIRCLE,
(WARD NO.7), NEAR GOVT. HOSPITAL,
KUSHTAGI, DIST: KOPPAL-583277.

7. BASAVARAJ BALUTAGI
S/O. DEVENDRAPPALUTAGI,
AGE: 40 YEARS, OCC: BUSINESS,
R/O.WARD NO.2, NEAR GOVT. HOSPITAL
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

8. SUVARNA BALUTAGI
W/O. BASAVARAJ BALUTAGI,
AGE: 32 YEARS, OCC: HOME MAKER,
R/O.WARD NO.2, NEAR GOVT. HOSPITAL,
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

...PETITIONERS

(BY SRI. NARAYAN V YAJI., ADVOCATE)

AND:

SMT. SUSHMA W/O. PRITHVIRAJ BALUTAGI
AGE: 26 YEARS, OCC: ENGINEER,
R/O.NO.1303, ENKAY ASSOCIATES
2ND FLOOR, 11TH MAIN ROAD,
SBI STAFF COLONY, HOSAHALLI
EXTENSION STAGE 1, VIJAYANAGAR,
BENGALURU-560040.

...RESPONDENT

(BY SRI. T.R. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE
PROCEEDING PENDING ON THE FILE OF LEARNED JMFC III COURT,
HUBBALLI IN BEARING CRL.MISC.NO.20/2023 U/SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT AS
AGAINST THE PETITIONERS VIDE ANNEXURE-A TO THE WRIT
PETITION AND THE COMPLAINT FILED BY THE RESPONDENT AS
AGAINST THE PETITIONERS U/SECTION 12 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT DATED 25/03/2023 VIDE
ANNEXURE-B TO THE WRIT PETITION ARE ILLEGAL AND
UNCONSTITUTIONAL.

THESE PETITIONS ARE COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Today, a joint memo was filed in the two petitions before this Court. The memo requests the quashing of the entire criminal proceedings pending in C.C. No. 9802/2023, which involve offenses punishable under Sections 498A, 323, 504, and 506 of the Indian Penal Code (IPC) and Sections 3 and 4 of The Dowry Prohibition Act, 1961 (DP Act). Additionally, it seeks to quash the proceedings in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (PWDV Act). Both matters are currently pending before the learned JMFC-III Court.

2. According to the joint memo, the petitioner and respondent, who are husband and wife respectively, have reached an amicable settlement. As part of the settlement, the respondent/wife has received a sum of Rs. 8,00,000/- as permanent alimony. In compliance with the terms of the joint memo, both parties have agreed to withdraw all allegations and counter-allegations made against each other. The NC: 2024:KHC-D:8663 respondent/wife has also agreed to withdraw the complaint registered in C.C. No.9802/2023.

3. This Court has conducted an inquiry with the respondent/wife. During the inquiry, she confirmed that she has voluntarily decided to resolve the marital dispute. She acknowledged that she has received the sum of Rs. 8,00,000/- by way of demand draft as part of the settlement. Furthermore, she expressed her agreement to withdraw the complaint filed in C.C. No.9802/2023.

4. Given the amicable settlement between the petitioner/husband and respondent/wife, and considering that the offenses in question are not heinous and are more civil in nature, this Court is of the view that the criminal proceedings pending in C.C. No.9802/2023 for the offenses punishable under Sections 498A, 323, 504, and 506 of the IPC, as well as Sections 3 and 4 of the DP Act, and in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of the PWDV Act, should be quashed.

The joint memo is hereby taken on record. Consequently, both petitions are disposed of. The criminal proceedings NC: 2024:KHC-D:8663 pending in C.C. No.9802/2023, and those in Crl.Misc.No.20/2023, both pending before the learned JMFC-III, Hubballi, are quashed.

Sd/-

JUDGE AM

Pruthviraj Balutagi S/O Ashok Balutagi vs Smt Sushma W/O Pruthviraj Balutagi on 26 June, 2024

-1-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2024
C/W WP No. 104419 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.102446 OF 2023 (482-)
C/W
WRIT PETITION NO.104419 OF 2023

IN CRL.P.NO.102446/2023

BETWEEN:

PRUTHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS, OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.

...PETITI

(BY SRI. NARAYAN V. YAJI, ADVOCATE)

AND:

1. SMT. SUSHMA W/O. PRUTHVIRAJ BALUTAGI,
AGE: 26 YEARS, OCC: ENGINEER,
R/O. NO.1303, ENKAY ASSOCIATES,

ASHPAK

KASHIMSA

MALAGALADINNI

2ND FLOOR, 11TH MAIN ROAD,

SBI STAFF COLONY, HOSAHALLI EXTENSION STAGE-I,

VIJAYANAGARA, BENGALURU-560040.

Digitally signed by ASHPAK
KASHIMSA MALAGALADINNI
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.07.02 15:47:14
+0530

2. THE STATE OF KARNATAKA,
THROUGH THE POLICE INSPECTOR,
WOMEN POLICE STATION,
HUBBALLI-DHARWAD,
REP/BY STATE PUBLIC PROSECUTOR,

OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDING DHARWAD-580011.

... RESPONDENT

(BY SRI. T.R. PATIL, ADV. FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2)

-2-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
PRAYING THAT QUASH THE ORDER DATED 31.08.2023 TAKING
COGNIZANCE OF THE OFFENCE U/SEC.498A, 323, 504, 506 OF IPC
AND U/SEC. 3 AND 4 OF DP ACT AS AGAINST THE PETITIONER BY III
ADDL.CIVIL JUDGE & JMFC, HUBBALLI IN C.C. NO.9802/2023 AND
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PENDING ON THE FILE OF THE 3RD ADDL. CIVIL JUDGE AND JMFC,
HUBBALLI AS IT IS ILLEGAL AND NOT MAINTAINABLE.

IN WP. NO.104419 OF 2023 (GM-FC)
BETWEEN:

1. PRITHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS,
OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
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BENGALURU-560098.
2. ASHOK
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE
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1ST FLOOR, 3RD MAIN ROAD,
NEAR PARVATHI NAGAR, BELLARY,
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KUSHTAGI, DIST: KOPPAL-583277.

-3-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

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W/O. DEVENDRAPPALUTAGI,
AGE: 55 YEARS, OCC: HOME MAKER,
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R/O.WARD NO.2, NEAR GOVT. HOSPITAL,
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

...PETITIONERS

(BY SRI. NARAYAN V YAJI., ADVOCATE)

AND:

SMT. SUSHMA W/O. PRITHVIRAJ BALUTAGI
AGE: 26 YEARS, OCC: ENGINEER,
R/O.NO.1303, ENKAY ASSOCIATES
2ND FLOOR, 11TH MAIN ROAD,
SBI STAFF COLONY, HOSAHALLI
EXTENSION STAGE 1, VIJAYANAGAR,
BENGALURU-560040.

...RESPONDENT

(BY SRI. T.R. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE
PROCEEDING PENDING ON THE FILE OF LEARNED JMFC III COURT,
HUBBALLI IN BEARING CRL.MISC.NO.20/2023 U/SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT AS
AGAINST THE PETITIONERS VIDE ANNEXURE-A TO THE WRIT
PETITION AND THE COMPLAINT FILED BY THE RESPONDENT AS
AGAINST THE PETITIONERS U/SECTION 12 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT DATED 25/03/2023 VIDE
ANNEXURE-B TO THE WRIT PETITION ARE ILLEGAL AND
UNCONSTITUTIONAL.

THESE PETITIONS ARE COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

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2. According to the joint memo, the petitioner and respondent, who are husband and wife respectively, have reached an amicable settlement. As part of the settlement, the respondent/wife has received a sum of Rs. 8,00,000/- as permanent alimony. In compliance with the terms of the joint memo, both parties have agreed to withdraw all allegations and counter-allegations made against each other. The NC: 2024:KHC-D:8663 respondent/wife has also agreed to withdraw the complaint registered in C.C. No.9802/2023.

3. This Court has conducted an inquiry with the respondent/wife. During the inquiry, she confirmed that she has voluntarily decided to resolve the marital dispute. She acknowledged that she has received the sum of Rs. 8,00,000/- by way of demand draft as part of the settlement. Furthermore, she expressed her agreement to withdraw the complaint filed in C.C. No.9802/2023.

4. Given the amicable settlement between the petitioner/husband and respondent/wife, and considering that the offenses in question are not heinous and are more civil in nature, this Court is of the view that the criminal proceedings pending in C.C. No.9802/2023 for the offenses punishable under Sections 498A, 323, 504, and 506 of the IPC, as well as Sections 3 and 4 of the DP Act, and in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of the PWDV Act, should be quashed.

The joint memo is hereby taken on record. Consequently, both petitions are disposed of. The criminal proceedings NC: 2024:KHC-D:8663 pending in C.C. No.9802/2023, and those in Crl.Misc.No.20/2023, both pending before the learned JMFC-III, Hubballi, are quashed.

Sd/-

JUDGE AM

Rajeswari. B. S vs Shivananda on 30 May, 2024

Author: H.T. Narendra Prasad

Bench: H.T. Narendra Prasad

-1-

NC: 2024:KHC:18400
CP No. 147 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD
CIVIL PETITION NO. 147 OF 2023

BETWEEN:

RAJESWARI. B. S.
W/O SHIVANAND
AGED ABOUT 30 YEARS
D/O L PRAKASH @ SHIVANANJAPPA
R/AT BELAKAVADI VILLAGE
B G PURA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT 571417.

...PETITIONER

(BY SRI. DINAKAR M P., ADVOCATE)

AND:

SHIVANANDA
S/O T S PRABHUSWAMY
Digitally signed by
by
HEMALATHA A
Location: High Court of Karnataka
KOWLANDE HOBLI
AGED ABOUT 34 YEARS
R/AT KAREPURA VILLAGE
NANJANAGUD TALUK
MYSURU DISTRICT
WORKING AT NESLEY INDIA LTD
K.I.A.D.B. INDUSTRIAL QUARTERS
NANJANAGUD, MYSURU DISTRICT 570009.

...RESPONDENT

(BY SRI. VINAYA KUMAR P., ADVOCATE [ABSENT])

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF

CPC, 1908, PRAYING TO WITHDRAW THE M.C. PETITION NO.
40/2019 PENDING ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMFC, NANJANAGUDU AND TRANSFER THE CASE TO THE

-2-

NC: 2024:KHC:18400

CP No. 147 of 2023

SENIOR CIVIL JUDGE AND JMFC, MALAVALLI UNDER THE
FACTS AND CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition under Section 24 of CPC is filed by the petitioner-wife seeking for transfer of M.C.No.40/2019 filed by the respondent-husband pending on the file of Senior Civil Judge and JMFC, Nanjanagudu to the file of Senior Civil Judge and JMFC, Malavalli.

2. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 23.04.2015 at Mahadeshwara Kalyana Mantapa, as per Hindu rites and customs. After the marriage, the petitioner was residing with her husband in her matrimonial house at T.Narasipura. In the year 2016, as matrimonial disputes arose between the parties, the petitioner started living separately with her mother in Belakavadi Village, Malavalli Taluk. She filed a C.Misc.No.504/2016 under the Protection of Women from Domestic Violence Act, 2005 (for short, 'DV Act') against the respondent on the file of NC: 2024:KHC:18400 Principal Civil Judge and JMFC, Malavalli. Thereafter, the respondent-husband filed a divorce petition in M.C.No.40/2019 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act before the Civil Judge and JMFC, Nanjanagudu. Since the petitioner is residing with her mother at Belakavadi village, Malavalli Taluk, she filed this petition for transfer of M.C.No.40/2019 filed by the respondent-husband to Malavalli.

3. The learned counsel for the petitioner-wife contended that the petitioner is residing with her mother in Belakavadi Village, Malavalli Taluk. Her father expired long back, and there are no other male members to accompany her to attend the case in Nanjanagudu, she has to travel 80 kms. from Malavalli to Nanjanagudu to attend the case and it causes more inconvenience to the petitioner. Hence, the learned counsel sought to allow the petition.

4. When the matter was called in the morning session, none appeared for the respondent, only the learned counsel for the petitioner was present. Hence, it NC: 2024:KHC:18400 was passed over. Even in the afternoon session also, there is no representation on behalf of the respondent.

5. Heard the learned counsel for the petitioner. Perused the petition papers.

6. It is not in dispute that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 23.04.2015 at Mahadeshwara Kalyana Mantapa, as per Hindu customs. Since there was a difference of opinion cropping up between the parties, from the year 2016, the petitioner started living separately with her mother at Belakvadi village, Malavalli Taluk. She filed C.Misc.No.504/2016 before the Principal Civil Judge, Malavalli under Section 12 of the DV Act. In that case, the respondent-husband appeared and he is prosecuting the case. Thereafter, in the year 2019, the respondent- husband filed M.C.No.40/2019 before the Civil Judge and JMFC, Nanjanagudu for divorce. Since the distance between Malavalli and Nanjanagudu is about 80 kms., it is difficult for the petitioner to travel to Nanjanagudu to prosecute the case. She is residing with her mother and NC: 2024:KHC:18400 her father expired long back, there are no male members to accompany her to attend her case at Nanjanagudu.

7. This Court in the case Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407 at Paragraph No.15 held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are NC: 2024:KHC:18400 interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiua Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr.

MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar
MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

8. Therefore, taking note of the inconvenience as made out by the petitioner and the law laid down in the case of Smt.M.V.Rekha (supra), which provides that the convenience of the wife is an aspect that is to be taken note of while considering the transfer petitions, petition deserves to be allowed. Accordingly, the following order is passed:

- i) The petition is allowed.
- ii) The case in M.C.No.40/2019 on the file of Senior Civil Judge and JMFC, Nanjanagudu is hereby NC: 2024:KHC:18400 withdrawn and transferred to the file

of Senior Civil Judge & JMFC, Malavalli.

iii) The transferor Court is hereby directed to transmit the entire records to the transferee court.

iv) The transferee court, after hearing the parties is directed to dispose of the said case, as expeditiously as possible and in accordance with law.

Sd/-

JUDGE CM

Rekha @ Lakhsmi And Anr vs Mallinath on 31 May, 2024

-1-

NC: 2024:KHC-K:3489
RPFC No. 200130 of 2023

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MRS JUSTICE K S HEMALEKHA

REV.PET FAMILY COURT NO.200130 OF 2023

BETWEEN:

1. REKHA @ LAKHSMI
W/O MALLINATH DODDAMANI
AGE: 30 YEARS, OCC: HOUSEHOLD,
R/O: C/O SHANTAPPA
S/O MALLAPPA DEVARMANI
MALLIKARJUN NILAYA,
BEHIND JAITEERTH KALYAN MANTAPA,
PLOT NO. 100, UDNOOR ROAD,
KALABURAGI.
2. ERANNA S/O MALLINATH DODDAMANI
AGE: 8 YEARS, OCC: NIL,
MINOR U/G HIS NATURAL MOTHER
PETITIONER NO. 1.

Digitally signed
by SWETA
KULKARNI
Location: High
Court of
Karnataka

...PETITIONERS

AND:

MALLINATH
S/O NEELAPPA DODDAMANI
AGE: 34 YEARS, OCC: CONSTABLE,
GURUMITAKAL POLICE STATION,
TQ: GURUMITKAL, DIST: YADGIR.

...RESPONDENT

(BY SRI SANTOSH PATIL, ADVOCATE)

THIS RPFC IS FILED U/S. 19(4) OF THE FAMILY COURTS ACT, PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE IMPUGNED ORDER PASSED BY THE PRL. JUDGE FAMILY COURT AT KALABURAGI IN CRL. MISC. NO.128/2019 DATED 18.07.2022 AND GRANT MAINTENANCE AMOUNT OF RS.10,000/- IN FAVOUR OF PETITIONER NO.1 FROM THE DATE OF PETITION AND ENHANCE THE MAINTENANCE AMOUNT OF RS.5,000/- TO 10,000/- IN FAVOUR OF PETITIONER NO.2 AND DIRECT THE RESPONDENT TO PAY THE SAME.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Seeking maintenance of Rs.10,000/- to herself and to son, petitioners filed claim petition in Crl.Misc.No.128/2009. The Principal Judge, Family Court, Kalaburagi [for short, 'the Family Court'], by the impugned order, rejected the claim of the wife and directed the husband to pay maintenance of Rs.5,000/- to the son.

2. Facts of the case are that petitioner No.1 and respondent are husband and wife and their marriage was solemnized on 26.02.2012. From the wedlock, petitioner No.2 is born. It is the case of the petitioner No.1 that due to the harassment meted by the respondent - husband, the petitioner filed criminal case against the husband under Section 498A of IPC in Crime No.61/2019. The case of the petitioner is that the NC: 2024:KHC-K:3489 husband and his family members were always insisting for dowry and lastly have thrown out the petitioner and her son from the matrimonial home. The respondent- husband is working as a Constable and earning around Rs.45,000/- per month and he has got agricultural land measuring 10 acres and getting income more than Rs.2,00,000/- per year. It is further case of the petitioner-wife that the husband has performed second marriage and that though he has sufficient means to maintain his wife and child, he has neglected to do so.

3. Pursuant to the summons issued by the Family Court, the respondent-husband appeared and filed his written statement. He admitted the relationship with that of the petitioner No.1 and the child born to them. It is the case of the respondent-husband that he is always ready and willing to accept the wife and take her back to the matrimonial home. However, the wife has made no efforts to join the matrimonial home.

4. The Family Court, on the basis of the pleadings, framed necessary points for consideration and held that the petitioner proved that the respondent has neglected and NC: 2024:KHC-K:3489 refused to maintain them and the petitioners are unable to maintain themselves and though the respondent-husband is having sufficient income to maintain the wife and child, he has refused to do

so. The Family Court, however, by the impugned order, arrived at a conclusion that since the wife is studying Nursing course, she can earn and maintain herself and refused to award any maintenance to the wife and awarded maintenance of Rs.5,000/- to the child.

5. Heard Sri B.K. Hiremath, learned counsel for the petitioners and Sri Santosh Patil, learned counsel for the respondent-husband.

6. The perusal of the impugned order would indicate that the Family Court, on the premise that the wife is studying for Nursing, arrives at a conclusion that she can maintain herself by doing nursing work and no maintenance needs to be awarded to her. Law is well settled under Section 125 Cr.P.C., if any person against whom a maintenance is sought has neglected to maintain his wife and the wife is unable to maintain herself, is entitled for maintenance. The material on record would also indicate that the husband is a Constable, the NC: 2024:KHC-K:3489 assets and liabilities have been filed by the parties before the Family Court. The present petition is resisted by the husband contending that the wife, on her own accord, has left the matrimonial home without reason and therefore, she is not entitled for maintenance. Further, that interim maintenance of Rs.3,000/- has been awarded under the Protection of Women from Domestic Violence Act, 2005 and though the husband is willing to take his wife, she has refused to join the matrimonial home, as such, she is not entitled for maintenance.

7. Though the Family Court holds that the husband has got sufficient income from salary and also from the landed property, denies maintenance to the wife on the sole ground as stated supra.

8. Under Section 125 Cr.P.C., the object of the legislation is to provide social justice which has been enacted to protect the weaker section of the society like women and children. The object is to compel a man to perform moral obligations towards the society in respect of maintaining his wife, children and old parents, so that they may not face destitution and become liability of the society or may be forced NC: 2024:KHC-K:3489 to adopt a life of vagrancy, immorality and crime for their subsistence of go astray. The reasoning assigned by the Family Court in denying the maintenance to the wife warrants interference, the petitioner No.1 studying for Nursing cannot be a ground for denial of maintenance.

9. The Family Court further holds that the maintenance of Rs.5,000/- is required to be awarded to the child, without considering that the present expenses to meet the daily needs of the child are increasing. The awarding of maintenance of Rs.5,000/- by the Family Court is also on the lower side. The respondent - husband is an able bodied person and is dutifully bound on his part to maintain his wife and child and to see that they are not made to face destitution. The non-awarding of maintenance to the wife and awarding of maintenance of Rs.5,000/- to the child warrants interference. In the circumstances, this Court pass the following:

ORDER

(i) The Revision petition is hereby allowed in part.

NC: 2024:KHC-K:3489

(ii) The impugned order dated 18.07.2022 passed in Crl.Misc.No.128/2019 by the Family Court is modified.

(iii) Petitioner No.1 - wife is entitled for monthly maintenance of Rs.3,000/- [Rupees Three Thousand Only] apart from the interim maintenance of Rs.3,000/- which is awarded in the petition filed under Domestic Violence Act and petitioner No.2 - child is entitled for further monthly maintenance amount of Rs.3,000/- [Rupees Three Thousand Only] with total of Rs.8,000/- [Rupees Eight Thousand Only] from the date of petition.

Sd/-

JUDGE SWK CT: VD

Sangeetha vs Avinash on 11 June, 2024

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NC: 2024:KHC-K:3795-DB

MFA No. 203505 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCL. FIRST APPEAL NO. 203505 OF 2023 (MC)

BETWEEN:

SMT. SANGEETHA W/O AVINASH MUSTOOR,
AGED ABOUT 31 YEARS, OCC: HOUSEHOLD,
R/O LINGAREDDY BUILDING,
KALANGATAKI ROAD,
SARASWATIPURA ROAD,
TQ. AND DISTRICT: DHARWAD.

...APPELLANT

(BY SRI. GANESH NAIK, ADVOCATE)

Digitally signed by AND:

BASALINGAPPA

SHIVARAJ

DHUTTARGAON

Location: HIGH

COURT OF

KARNATAKA

Sri. AVINASH

S/O VENKATESH MUSTOOR,

AGED ABOUT 35 YEARS,

OCC: PRIVATE EMPLOYEE,

R/O: RANGANATH NILAYA,

BALAJI NAGAR YADGIRI,

TQ. AND DISTRICT: YADGIRI- 585202.

...RESPONDENT

(BY SRI. G. G. CHAGASHETTI, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 28 OF HINDU MARRIAGE ACT, PRAYING TO ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE PASSED IN M.C.NO.14/2020 BY THE COURT OF SENIOR CIVIL JUDGE AND CJM AT YADGIR DATED 30.09.2023 AND FURTHER TO DISMISS THE PETITION OF THE RESPONDENT AND ALSO TO GRANT ANY OTHER RELIEF TO WHICH THE APPELLANT IS FOUND ENTITLED IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY
ASHOK S. KINAGI J., DELIVERED THE FOLLOWING:

JUDGMENT

The appellant and respondent are present and they are identified by their respective counsel. They have filed Memorandum of Agreement under Section 89 of the CPC r/w 24 and 25 of the Karnataka Civil Procedure (Mediation) Rules, 2005. The contents of the memorandum of agreement reads as follows:

"The appellant and respondent humbly submits as under:

1. The Appellant has preferred the present appeal challenging the Judgment and decree in M.C. No.: 14/2020 dated: 30.09.2023 granting decree of Divorce by dissolving the marriage between the appellant and respondent solemnized on 16.05.2019 at Balaji Temple, Yadgiri.

NC: 2024:KHC-K:3795-DB

2. The appellant submits that, the Respondent has sought for dissolution of the marriage based on the allegation of the cruelty U/Sec. 13(1)(A) of Hindu Marriage Act and the trial court based on the allegations made by the respondent was pleased to grant the decree of divorce on the ground of cruelty.

3. The appellant and respondent submit, due to intervention of well wishers, family, friends and relatives both respondent and appellant have mutually agreed for amicable settlement on the following terms.

I. The appellant has agreed to withdraw the present appeal and has mutually agreed for dissolution of marriage between the appellant and the respondent by way of mutual consent.

II. The appellant has received a sum of Rs. 10,50,000/- (Ten lakhs Fifty Thousand rupees only) towards one time permanent alimony by virtue of D.D. bearing No.:031679 of amount Rs. 9,00,000/- (Nine Lakhs Rupees only) drawn on Axis Bank, Raichur Branch (K.T.) dated:

10.06.2024 and remaining amount of Rs.

1,50,000/- is paid in the form of cash which is duly acknowledged by the appellant.

NC: 2024:KHC-K:3795-DB III. The appellant has received all her belongings and has no objection for dissolution of their marriage and both the parties are at liberty to proceed in their life without any intervention of either party.

iv. Both the parties herein withdraw all the allegations made against each other and the appellant under takes not to claim any further maintenance in any form.

V. The appellant also under takes not to initiate any legal proceedings under the provision of Protection of Women from Domestic Violence Act and the provisions of Criminal proceedings against the respondent or any of his family members.

Wherefore, the Appellant and Respondent prays this Hon'ble court be pleased to allow the present Memorandum of Settlement in terms of the present petition and confirm the dissolution of marriage granted by the court below in M.C. No.: 14/2020 dated: 30.09.2023 by the court of Senior Civil and C.J.M. Yadgiri, in the interest of justice and equity."

2. The said compromise conditions are read over and explained to them in English language, they have NC: 2024:KHC-K:3795-DB accepted the terms of compromise. The memo random of agreement is placed on record.

3. The appeal is disposed of in terms of the memorandum of agreement. Accordingly, the respondent has handed over the demand draft bearing No.031679 of Rs.9,00,000/- (Nine Lakhs Rupees Only) drawn on Axis Bank, Raichur Branch dated 10.06.2024 and the remaining amount of Rs.1,50,000/- is paid in the form of the cash before the Court, the appellant acknowledges receipt for having received the said amount.

Draw decree in terms of memorandum of agreement.

In view of disposal of IA.No.1/2024, does not survive for consideration.

Sd/-

JUDGE Sd/-

JUDGE MSR CT;BN

Santosh S/O Kanteppa Wadeepnoor vs Renuka W/O Santosh Wadeepnoor And Anr on 27 March, 2024

Author: H.T.Narendra Prasad

Bench: H.T.Narendra Prasad

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NC: 2024:KHC-K:2602-DB
MFA No.202478 of 2022

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
THE HON'BLE MR. JUSTICE K V ARAVIND

MISCL. FIRST APPEAL NO.202478 OF 2022 (FC)

BETWEEN:

SRI SANTOSH
S/O KANTEPPA WADEPNOOR
AGE ABOUT: 43 YEARS
R/O H NO.8-10-117
BHAGYAWANTI LINGAYAT
KHANALVALI GANESH MAIDAN
BIDAR - 585 401.

...APPELLANT

(BY SRI GANESH SUBHASHCHANDRA KALBURGI AND
SRI ABHINAV R., ADVOCATES)

Digitally signed

by VARSHA N

RASALKAR

AND:

Location: HIGH

COURT OF

KARNATAKA

1. SMT. RENUKA

W/O SANTOSH WADEPNOOR

AGED ABOUT 33 YEARS

R/O PLOT NO.55, H NO.3/352

ALAM PRABHU NAGAR

GUMPA, BIDAR - 585 403.

2. ABHISHEK
S/O SANTOSH WADEPNOOR
AGED ABOUT 16 YEARS
MINOR REPRESENTED BY HIS
GUARDIAN MOTHER

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NC: 2024:KHC-K:2602-DB
MFA No.202478 of 2022

THE 1ST RESPONDENT HEREIN
R/O PLOT NO. 55, H.NO.3/352
ALAM PRABHU NAGAR
GUMPA, BIDAR - 585 403.

... RESPONDENTS

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.08.2022 PASSED BY THE PRINCIPAL JUDGE FAMILY COURT, BIDAR IN O.S.NO.04/2020 AND DISMISS THE SAID SUIT BY ALLOWING THE APPEAL.

THIS MFA COMING ON FOR ADMISSION THIS DAY H.T.NARENDRA PRASAD J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the husband under Section 19(1) of the Family Courts Act, challenging the judgment and decree dated 05.08.2022, passed in O.S.No.4/2020, whereby the husband was directed to pay the monthly maintenance of Rs.5,000/- to the wife and Rs.4,000/- to the son.

2. For the sake of convenience, parties are referred to as per their ranking before the Family Court.
3. The plaintiff Nos. 1 and 2 are the wife and son of the defendant. The plaintiffs filed a suit for maintenance and creating charges over the properties of the defendant.

NC: 2024:KHC-K:2602-DB The case of the plaintiffs is that plaintiff No.1 and defendant were married on 25.05.2003 in Bhavani Mandir, Kumbarwada, Bidar. Out of the wedlock, plaintiff No.2 born. After some time, there was a difference of opinion between the plaintiff No.1 and the defendant. They started living separately. Since the plaintiffs are not in a position to maintain their livelihood and the defendant was not paying any money, they filed the above suit before the Family Court, Bidar.

4. After service of summons, defendant appeared through counsel. After hearing the parties, the

Family Court, by the impugned order, decreed the suit, directing the defendant to pay monthly maintenance of Rs.5,000/- to plaintiff No.1 - wife and Rs.4,000/- to plaintiff No.2 - son. Being aggrieved by the same, defendant - husband is before this Court.

5. Learned counsel appearing for the appellant/ defendant contended that before awarding monthly maintenance, the plaintiffs have not filed any affidavit NC: 2024:KHC-K:2602-DB disclosing their assets and liabilities. The Apex Court in the case of RAJNESH vs. NEHA reported in (2021) 2 SCC 324 has held that the Family Court, before deciding the maintenance, direct the parties to file an affidavit disclosing their assets and liabilities. Contrary to the judgment of the Apex Court, the decree has been passed.

6. Per contra, learned counsel appearing for the respondents/plaintiffs contended that the appellant/ defendant has appeared before the Family Court and after hearing both the parties the Family Court decreed the suit. The Family Court, after considering the oral and documentary evidence of the parties rightly decreed the suit. The decree passed by the Family Court is in accordance with law. Hence, sought for dismissal of the appeal.

7. Heard the learned counsel for the parties and perused the judgment and decree.

8. It is not in dispute that plaintiff Nos. 1 and 2 are the wife and son of the defendant. It is also not in dispute NC: 2024:KHC-K:2602-DB that plaintiff and defendant were married on 25.05.2003 in Bhavani Mandir, Kumbarwada, Bidar. Because of the dispute between the parties, the husband and wife were living separately. Since the plaintiff No.1 was unable to maintain herself and her son, she filed a suit against the defendant for maintenance. The Apex Court in the case of RAJNESH (supra) held as follows:

"72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise NC: 2024:KHC-K:2602-DB application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to

the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

NC: 2024:KHC-K:2602-DB 72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof. 72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned. 72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

NC: 2024:KHC-K:2602-DB 72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court. 72.11. (k) A professional Marriage Counsellor must be made available in every Family Court."

9. Following the judgment of the Apex Court in the case of RAJNESH (supra), the Apex Court in the case of ADITI ALIAS MITHI vs. JITESH SHARMA reported in 2023 SCC Online SC 1451 held as follows:

NC: 2024:KHC-K:2602-DB "15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance.

Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial

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NC: 2024:KHC-K:2602-DB level is taken up to this Court and the parties are forced to litigate.

10. From the above judgments, it is very clear that the Family Court, before passing any order for maintenance, either interim order or final order, has to insist the parties to file an affidavit in respect of the assets and liabilities. In the case on hand, both the plaintiff and the defendant have not filed their affidavits in respect of the assets and liabilities. Without the affidavit, the Family Court passed the decree and directed the defendant to pay the maintenance. The judgment and decree passed by the Family Court is contrary to the judgment of the Apex Court in the cases of RAJNESH (supra) and ADITI ALIAS MITHI (supra). Hence, the judgment and decree is unsustainable and liable to be set aside.

11. Accordingly, we pass the following order:

(i) The appeal is allowed.

(ii) The judgment and decree passed by the Family Court, Bidar in O.S.No.4/2020 is set aside.

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NC: 2024:KHC-K:2602-DB

(ii) The Family Court is directed to reconsider the matter afresh in terms of the law laid down by the Apex Court in the cases of RAJNESH (supra) and ADITI ALIAS MITHI (supra).

(iv) The parties are directed to appear before the Family Court, Bidar, on 24.04.2024, without any further notice.

(v) The Family Court, Bidar is directed to dispose of the suit, as expeditiously as possible, not later than four months from the date of appearance of the parties.

(vi) The amount deposited by the appellant/ defendant before this Court is ordered to be transferred to the Family Court, Bidar.

Sd/-

JUDGE Sd/-

JUDGE CM

Shiddesh Bharamappa Channagiri vs The State Of Karnataka on 13 June, 2024

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NC:2024:KHC-D:7986-DB
CRL.A. No. 100145 of 2021

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH
DATED THIS THE 13TH DAY OF JUNE, 2024

R

BEFORE
THE HON'BLE MR JUSTICE E.S.INDIRESH
AND
THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR
CRIMINAL APPEAL NO. 100145 OF 2021 (C)

BETWEEN:

SHIDDESH BHARAMAPPA CHANNAGIRI
AGE 18 YEARS, OCC: HAMALI

**YASHAVANT
NARAYANKAR** R/O. MASUR SIDDESHWARA NAGAR

Location: HIGH COURT OF KARNATAKA DHARWAD BENCH HIREKERUR TALUK, HAVERI DISTRICT.

(ACCUSED BEFORE THE SESSIONS COURT,
APPELLANT BEFORE THE HON'BLE HIGH COURT)

...APPELLANT

(BY SRI.S.D.BABLADI., ADVOCATE (THROUGH VC))
AND:

1. THE STATE OF KARNATAKA
HIREKERUR POLICE STATION
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HTGH COURT BUILDINGS DHARWAD.

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NC:2024:KHC-D:7986-DB

2. SMT. PALLAVI BALIGAR
AGED ABOUT 25 YEARS OCC: COOLIE
R/O. MASUR SIDDESHWARA NAGAR
HIREKERUR TALUK
HAVERI DISTRICT.

(COMPLAINANT BEFORE THE SESSIONS COURT
RESPONDENT BEFORE THIS HON'BLE HIGH COURT)

...RESPONDENTS

(BY SRI.M.B.GUNDAWADE (ADDL.SPP.FOR R1) (VC)
R2 SERVED AND UNREPRESENTED)

THIS CRIMINAL APPEAL IS FILED U/S. 374(2) OF CR.P.C.
PRAYING TO SET ASIDE THE JUDGMENT PASSED BY THE ADDL.
DISTRICT AND SESSIONS JUDGE, FTSC-1, HAVERI
PUNISHABLE UNDER SECTIONS 366, 376(2)(I) OF IPC AND
SECTION 6 OF POSCO ACT, 2012 AND 3(2)(V) OF SC AND ST
(PA) ACT 1989 IN SPECIAL S.C.NO.31/2018 DATED 9TH APRIL
2021 AND ACQUIT THE APPELLANT FROM THE CHARGES
LEVELED AGAINST HIM.

THIS CRIMINAL APPEAL, COMING ON FOR HEARING AND
THE SAME HAVING BEEN HEARD AND RESERVED FOR
PRONOUNCEMENT OF JUDGMENT, THIS DAY RAMACHANDRA
D. HUDDAR J., DELIVERED THE FOLLOWING:

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NC:2024:KHC-D:7986-DB
CRL.A. No. 100145 of 2021

JUDGMENT

The present appeal has been filed by the Child in Conflict with Law (hereinafter called as 'CCL') impugning the orders dated 9th April, 2021 passed in Special Sessions Case No.31 of 2018 by the Additional District and Sessions Judge, FTSC- 1, Haveri. Briefly, the facts leading to this appeal are as under:

FIR was registered against CCL by the Hirekerur Police Station for the offences punishable under sections 366, 376(2)(i) of IPC, under Section 6 of POCSO Act, 2012 and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 as amended (in short 'SC & ST (PA) Act').

2. After his arrest on 17.4.2018, he was released on bail. After completion of investigation, charge sheet was filed. The Juvenile Justice Board ('JJB' in short) was called upon to decide the issue as to whether the CCL is to be tried by the Board or as an adult by the NC:2024:KHC-D:7986-DB Children's Court. In this appeal the learned Counsel for the appellant mainly pressed into service, that no proper procedures have been followed by the JJB or the Children's Court in assessing the age of the CCL.

3. It is alleged in the FIR that, the victim girl was aged about two years six months at the time of alleged incident and belongs to Scheduled Tribe. It is alleged in the FIR that, on 15.4.2018, accused kidnapped the minor victim girl from the lawful guardianship of the complainant with an intention to have illicit intercourse with her. With that intention CCL took the victim girl behind his house, situated at Masur village, committed forcible sexual assault on her, so also aggravated penetrative sexual assault upon her, repeatedly, knowing fully well that, she was a minor and belongs to the Scheduled Tribe. Therefore, it is alleged by the complainant in the complaint that, the accused had committed the aforesaid offences.

NC:2024:KHC-D:7986-DB

4. Initially, as per the records, the matter was pending before JJB, Haveri. The learned President of JJB, Haveri, passed a detailed order on 14.9.2018 with a direction to transfer the case to the Children's Court i.e., the trial Court. During the pendency of the trial as stated above, CCL was granted bail.

5. Before the learned Special Court i.e., Children's Court to prove the guilt of the accused, prosecution has examined in all, 11 witnesses in the shape of PWs. 1 to 11, so also got marked Ex.P.1 to P2o. MO Nos.1 to 11 are also marked.

6. Learned trial Court i.e., Children's Court after having heard the arguments and after evaluation of the evidence placed on record by the prosecution, found the CCL guilty of committing the offences under sections 366, 376(2)(i) of IPC, under Section 6 of the POCSO Act, 2012 and under Section 3(2)(v) of SC and ST (PA) Act, 1989 and sentenced him as under:

NC:2024:KHC-D:7986-DB "The accused shall undergo rigorous imprisonment for a period of 5 years and shall pay fine of Rs.2,000/- For the offence punishable under Section 366 of IPC. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of one year.

The accused shall undergo rigorous imprisonment for a period of 10 years and shall pay fine of Rs.5,000/- for the offence punishable under Section 6 of POCSO Act. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of 6 months.

The accused shall undergo life imprisonment and shall pay fine of Rs.5,000/- for the offence punishable under Section 3(2) (V) of SC/ST (Prevention of Atrocities) Act,

1989. In default of payment of fine amount, the accused shall undergo rigorous imprisonment for further period of five years."

7. Being aggrieved and dissatisfied by the impugned judgment, now, the CCL is before this Court, challenging the said judgment of conviction and order of sentence passed against him.

8. The learned counsel for the appellant Sri S.D.Babaladi with all force submits that, the JJB as well as the Children's Court have committed error in holding NC:2024:KHC-D:7986-DB that, the CCL is an adult and without applying the judicious mind, have come to the conclusion that, the CCL is an adult and he has been wrongly tried by the Children's Court. It is his submission that, the appellant admittedly was a juvenile, aged 16 years 10 months 20 days as on the date of commission of the alleged offence. According to him, as per the provisions of Juvenile Justice Act, 2015 (in short 'the Act'), it provides two procedures, out of which, JJB has to opt for one found suitable.

9. Sri. S. D. Babladi, Advocate for appellant further submits that, the JJB has passed an order on preliminary assessment under section 15 read with section 18(3) of Juvenile Justice (Care and Protection of Children) Act, 2015. According to this provision, the JJB has received a report from Psychologist attached to the DIMHANS. The JJB has to assess mental and physical capacity of this CCL to commit to the aforesaid offences, so also ability to understand the consequences of those acts. It is his NC:2024:KHC-D:7986-DB submission that, CCL has no maturity and he is innocent as such, he should have been tried before the JJB only. It is his further submission that, the learned JJB has just reproduced the sections and has wrongly come to the conclusion based upon the certificate issued by the Headmaster collected by the Investigation Officer stating that, as on the date of commission of the offence, the age of the CCL was 16 years, 10 months, 20 days. The said certificate was issued by the Headmaster, Government Lower Primary School, Masur dated 25.4.2018.

10. It is his submission that, when the aforesaid offences are alleged to be the heinous offences as per Section 2(33) of the JJ Act, 2015, the JJB has just referred the report of the Psychologist. No further report from the experts in the shape of DNA test or ossification test have been obtained by the Board. Without considering that, the impugned order was passed by the JJB by coming to the wrong conclusion, that, the CCL has NC:2024:KHC-D:7986-DB to be tried as an adult. The Children's Court passed an order on 5.8.2019 after transfer of the case stating that, the CCL has to be tried as an adult. The said order passed by the Children's Court shows that, there is no application of mind by the Children's Court also. No opportunity was given to the CCL to prove that, he was still a juvenile and having no maturity at all. He submits that, the order so passed by the JJB as well as the Children's Court is cryptic in nature. They have been passed without giving any opportunity either to the prosecution or to the appellant. As such, the principles of natural justice, that is, audi alteram partem, is not followed by the JJB as well as the Children's Court. This has affected the fundamental rights of the appellant as provided under Articles 14, 19 and 21 of the Constitution of India.

11. In support of his submission, the learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court of India in A.R.Antulay Vs.

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NC:2024:KHC-D:7986-DB R.S.Nayak and another, reported in (1988) 2 SCC

602. Further, learned counsel for the appellant submits that, on perusal of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the POSCO Act and also the provisions of the IPC, it shows that, if a juvenile is above 16 years of age, looking to his mental maturity, he can either be tried by the JJB or case may be transferred to the Children's Court. It is his submission that, even after transfer of a juvenile to the Children's Court, the Children's Court is required to take a fresh enquiry and adjudicate as to whether he should be tried as an adult. It is his submission that, when law prescribes alternative punishments in that case, judicial authority applying such laws has to be extremely cautious and careful while passing such orders, keeping the interest of women, children and persons belonging to backward caste, persons affected by extreme poverty or socially neglected group to see that equal justice is imparted to, as provided under the preamble of the Indian Constitution.

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12. In support of this submission, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India in Bachan Singh Vs. State of Punjab (1980) 2 SCC 684. So also, he submits that, there is no proper procedure followed with regard to the assessment by conducting the preliminary inquiry by the JJB as well as the Children's Court, no adequate opportunity was given to the appellant. Therefore, the procedure so adopted is patently illegal, erroneous, and unconstitutional. Therefore, he submits that, this case is a fit case to set aside the conviction.

13. He also relies upon a judgment of the Hon'ble Apex court in Narayan Chetanram Chaudhary Vs. State of Maharashtra (2000) 8 SCC 457 Supreme Court) which has dealt with the provisions of the JJ Act as well as other provisions. According to his submission, the intention of the Legislature has not been properly understood by both JJ Board as well as the children's

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NC:2024:KHC-D:7986-DB Court. He further relies upon the judgment in Mahesh Vs. State of Rajasthan (2021) 18 SCC 582.

14. Relying upon all these provisions of law as well as the said Judgments, the learned counsel for the appellant submits that, on this lapse on the part of the Children's Court as well as JJ Board, the conviction so passed against the accused and order of sentence is liable to be set aside.

15. In addition to that, he submits that, the witnesses so examined in this case, are all relatives. They are all interested witnesses. Because of some domestic dispute between the father of the CCL as well as the complainant and her mother, a false case has been foisted against CCL, falsely implicating

him. As the father of the CCL was a drunkard and every day he used to quarrel being a neighbour of the complainant's mother, because of that alleged irritation and because of several quarrels in between them, the CCL has been falsely implicated in this case.

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16. In support of his submission, he relied upon certain evidence placed on record by the prosecution, as well as pointed out certain contradictions and discrepancies in the evidence spoken to by the witnesses examined by the prosecution. It is his submission that, the Investigation Officer also has not properly followed the procedure. Therefore, he submits that, the appeal so filed by the appellant deserves to be allowed and the judgment of conviction and order of sentence, so passed against the CCL is to be set aside.

17. As against this submission, learned counsel for the respondent - State Sri M.B.Gundawade, Additional State Public Prosecutor submits that, on perusal of the order sheet of JJ Board as well as the Children's Court, after fully satisfying, the JJ Board has come to the conclusion that, the CCL is a juvenile, but has to be tried as an adult. The said finding is based upon the report from the Psychologist from the DIMHANS Hospital, Dharwad. So also, certain guidelines which were required

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NC:2024:KHC-D:7986-DB are followed by the JJB and the said order is in strict adherence to the provisions of the JJ Act.

18. He further submits that, while assessing the age of the CCL, the JJ Board has taken to consideration the birth certificate issued by the Headmaster, where the CCL was studying at that point of time. That was a conclusive proof. The investigation officer has maintained throughout his investigation that, this CCL is aged in between 16 and 18 years, who has to be tried by the Children's Court only. No appeal or revision though available to the appellant - CCL was filed by him. Thereby, whatever the order so passed by the JJ Board and Children's Court with regard to the age of the CCL has become final. He was capable of understanding the nature of the offences which he has committed. He had full knowledge about this. Therefore, now the appellant cannot find fault with JJ Board or the Children's Court.

19. It is his further submission that, after assessing the evidence and its evaluation as the complainant

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NC:2024:KHC-D:7986-DB herself is an eyewitness to the said incident so also her mother, who accompanied her, that itself goes to establish that just to deprive the prosecution case, the appellant

has made out such a ground in this appeal. The said submission of the learned Counsel for the appellant, according to him, cannot be accepted. Thus, it is submitted that, the learned Children's Court has rightly passed the legally sustainable judgment of conviction and order of sentence, which do not require any interference by this Court.

20. We have given our anxious considerations to the arguments of both side. Meticulously perused the records. In view of rival submissions of both the side, the points that would arise for our consideration are:

(1) Whether the appellant proves that no proper procedures have been followed by the JJ Board as well as the Children's Court in ascertaining and assessing his age as a juvenile as submitted?

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NC:2024:KHC-D:7986-DB (2) Whether the trial Children's Court has committed any legal or factual error in finding the CCL guilty of committing the offence?

(3) What order?

21. In view of the submissions made at the Bar it is just and proper to incorporate the relevant statutes and rules with regard to the present facts of the case in this judgment so as to have a better understanding of the provisions of the Act.

Section 2(10) of the JJ Act defines Board i.e., "Board" means a JJB constituted under Section 4.

Section 2(13) speaks of "child in conflict with law", it means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such an offence.

Section 2(20) speaks of "Children's Court". It means a court established under the commissions for Protection of Child Rights Act, 2005 or the Special Court

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NC:2024:KHC-D:7986-DB under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such Courts have not been designated, the Court of sessions having jurisdiction to try offences under the Act.

Section 2(22) defines Committee, it means Child Welfare Committee constituted under Section 27.

Section 2(23) defines 'Court', it means a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts.

Section 2(33) defines "heinous offences". These heinous offences includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment for seven years or more.

Section 4. speaks of "JJB". As per this section, a Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of first class not being a Chief Metropolitan or Chief Judicial Magistrate.

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NC:2024:KHC-D:7986-DB Section 7 speaks of "procedure in relation to Board". Sub section 2 of this section 7 also speaks of procedure to be followed by the JJB.

22. The most important sections are section 14, 15 and 17 to 19 of the JJ Act. It speaks of inquiry by Board regarding Child in Conflict with Law.

Section 14: Inquiry by Board regarding child in conflict with law.--

(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

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NC:2024:KHC-D:7986-DB (3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:--

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-

treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible

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NC:2024:KHC-D:7986-DB and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry; 17

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,--

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

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NC:2024:KHC-D:7986-DB Section 15. Preliminary assessment into heinous offences by Board.--

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.--For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the

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NC:2024:KHC-D:7986-DB procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub- section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Section 17. Orders regarding a child not found to be in conflict with law.--

(1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect. 18.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

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NC:2024:KHC-D:7986-DB Section 18. Orders regarding child found to be in conflict with law.--

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,--

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

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(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

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(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to--

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then

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NC:2024:KHC-D:7986-DB the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 19. Powers of Children's Court.--

(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that-- 19

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law,

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NC:2024:KHC-D:7986-DB shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

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NC:2024:KHC-D:7986-DB (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

23. Even the other provisions like Section 101 speaks of appeals on the orders under the Act, so also the act speaks of revision.

24. Even in this judgment, it is just proper to incorporate certain model rules framed in the year 2016(as amended) i.e., such rule 10, 10A and 11 of Juvenile Justice (Care and Protection of Children's Model) Rules, 2015. They read as under:

10. Post-production processes by the Board.- (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:

(i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first

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NC:2024:KHC-D:7986-DB appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;

(ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;

(iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and

(iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4.

(2) In all cases of release pending inquiry, the Board shall notify the next date of hearing, not later than fifteen days of the first summary inquiry and also seek social investigation report from the Probation Officer, or in case a Probation Officer is not available the Child Welfare Officer or social worker concerned through an order in Form

5. (3) When the child alleged to be in conflict with law, after being admitted to bail, fails to appear before the Board, on the date fixed for hearing, and no application is moved for exemption on his

behalf or there is not sufficient reason for granting him exemption, the Board shall, issue to the Child Welfare Police Officer and the Person- in-charge of the Police Station directions for the production of the child.

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NC:2024:KHC-D:7986-DB (4) If the Child Welfare Police Officer fails to produce the child before the Board even after the issuance of the directions for production of the child, the Board shall instead of issuing process under section 82 of the Code of Criminal Procedure, 1973 pass orders as appropriate under section 26 of the Act.

(5) In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child.

(6) In cases of petty or serious offences, the final report shall be filed before the Board at the earliest and in any case not beyond the period of two months from the date of information to the police, except in those cases where it was not reasonably known that the person involved in the offence was a child, in which case extension of time may be granted by the Board for filing the final report.

(7) When witnesses are produced for examination in an inquiry relating to a child alleged to be in conflict with law, the Board shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872) so as to

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NC:2024:KHC-D:7986-DB interrogate the child and proceed with the presumptions in favour of the child. (8) While examining a child alleged to be in conflict with law and recording his statement during the inquiry under section 14 of the Act, the Board shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to.

(9) The Board shall take into account the report containing circumstances of apprehending the child and the offence alleged to have been committed by him and the social investigation report in Form 6 prepared by the Probation Officer or the voluntary or non- governmental organisation, along with the evidence produced by the parties for arriving at a conclusion.

10 A. Preliminary assessment into heinous offences by Board.- (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as

per provisions of section 14 of the Act. (2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult

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NC:2024:KHC-D:7986-DB circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise. (4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

11. Completion of Inquiry.- (1) Where after preliminary assessment under section 15 of the Act, in cases of heinous offences allegedly committed by a child, the Board decides to dispose of the matter, the Board may pass any of the dispositional orders as specified in section 18 of the Act.

(2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.

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NC:2024:KHC-D:7986-DB (4) Where the Board is satisfied that it is neither in the interest of the child himself nor in the interest of other children to keep a child in the special home, the Board may order the child to be kept in a place of safety and in a manner considered appropriate by it.

(5) Where the Board decides to release the child after advice or admonition or after participation in group counseling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counseling and community service.

(6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behavior and well-being of the child for a maximum period of three years.

(7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9. (8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or guardian, except where it is not in the best interest of the child to do so.

(9) The Board, where it releases a child on probation and places him under the care of

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NC:2024:KHC-D:7986-DB parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.

(10) Where it appears to the Board that the child has not complied with the probation conditions, it may order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.

(11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-section (1) of section 18 of the Act.

25. The appellant has not questioned the designation of a Special Court established under the Juvenile Justice Act to try the offences of present nature.

26. Section 28 POCSO Act speaks of designation of Special Courts, which is not in dispute. On perusal of the aforesaid provisions of law, Section 15 of the JJ Act enables the board to make preliminary assessment into heinous offences, where such an offence alleged to have

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NC:2024:KHC-D:7986-DB been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which the offence was alleged to have been committed.

27. On reading the proviso to the section 15, it provides that for making such an assessment, the Board may take assistance of an experienced Psychologist or Psycho-social worker, or other experts. Further explanations provide that, the process of preliminary assessment is not a trial but merely to assess the capacity of such a child to commit and understand the consequences of the alleged offence. The importance of the assistance from the expert is even evident from reading section 101(2) of the Act. While considering the appeal against the order passed under section 15, the Appellate Authority can also take assistance of experts other than those who assisted the Board.

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28. Section 14 (3) of the Act provides, that the preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. But, in view of the recent judgment of the Hon'ble Supreme Court of India in Criminal Appeal No. 2411 of 2024 decided on 7.5.2024 in Special Criminal No.3033 of 2024 CHILD IN CONFLICT WITH LAW THROUGH HIS MOTHER v. THE STATE OF KARNATAKA AND ANOTHER, it is held that, such a period so prescribed is directory and not mandatory.

29. On reading the aforesaid provision of law, when the child-accused is produced before the JJB, mandatorily, the JJB has to follow the following procedures before transferring the case to the Children's Court. Once the JJB satisfies that the juvenile is in between 16-18 years, it has to transfer the case to the Children's Court.

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NC:2024:KHC-D:7986-DB Procedures to be followed by Children's Court when a CCL between 16-18 years allegedly commits Heinous Offence is described in a pictorial manner as under.

On receipt of preliminary assessment from JJB (Section

15), the Children's Court may decide (Section 19) There is a need for trial of the There is no need for trial of child as an adult as per the the child as an adult and may provisions of CrPC, 1973 and conduct an inquiry as JJB and pass appropriate orders after pass appropriate orders in trial subject to the provisions of Section 21 considering the accordance with provisions of special needs of the child, the Section 18 {Section 19(1)(ii)} tenets of fair trial and maintaining a child friendly atmosphere. {Section 19(1)(i)} Children's Court shall ensure that the final order, with regard to child shall include an individual care plan for rehabilitation of child, including follow up by PO or by DCPU or a social worker {Section 19 (2)} Children's Court shall ensure Reports {Section 19 (4)} Children's Court shall that there is a periodic follow shall be forwarded to the ensure that the child up report every year by the PO Children's Court for record who is found to be in or the DCPU or a social worker, and follow up, as may be conflict with law is as required, to evaluate the required. {Section 19 (5)} sent to a Place of progress of the child in the Safety till he attains place of Safety and to ensure the age of 21 years that there is no ill-treatment to and thereafter, the the child in any form. {Section person may be 19 (4)} transferred to a jail.

{Section 19 (3)}

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NC:2024:KHC-D:7986-DB Thus, on reading the above provisions of the Act, it is very much necessary to follow the following Guidelines by the Juvenile Justice Board.

1. Age enquiry of the CCL.

i) Conducted as per Sec.94 of the Act.

ii) Primarily the age can be determined on the basis of appearance of Child.

iii) In case the age cannot be so determined, the Act provides that the age is to be determined, firstly on the basis of date of birth as mentioned in school Certificates/ Matriculation Certificates/equivalent certificates from concerned examination board.

iv) If such Certificates are not available, then on the basis of birth certificate given by corporation or Municipal authority or Panchayat.

v) If the Municipal record is also not available, then the age is determined by ossification test or any other latest medical age determination test conducted by orders of the committee or the Board such medical test has to be concluded within 15 days of the order.

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2. JJB has to receive social investigation report:-

i) The report should includes information regarding the antecedents; family background and other material circumstances in which the offence was committed.

ii) Based on this report JJB can take decision in best interest of the CCL.

iii) It is to be prepared by Probation Officer and if he is not available, then by Child welfare officer/social worker.

iv) It has to be prepared within 15 days from the date of first production of the CCL before JJB.

3. JJB to consider 4 aspects while assessing a minor.

i) Physical capacity of the minor to commit the offence.

ii) Mental capacity of the minor to commit the offence.

iii) Ability to understand the Consequences of the alleged offence.

iv) Circumstances under which the offence was allegedly committed.

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NC:2024:KHC-D:7986-DB

4. JJB has to refer the report of Psychologist as well as expert opinion.
5. CCL is to be thoroughly examined, just one time examination is not sufficient to transfer the case to Children's Court.

Following Guidelines are to be followed by the Children's Court

1. After transferring any POCSO case from JJ Board to Children's Court, the Children's Court is required to take a fresh enquiry and adjudicate as to whether he should be tried as an adult or not/ maturity test.
2. As per Sec.19 of the amended Act, a Children's Court has to ensure that the Child in conflict with the law is sent to a 'Place of safety' until he reaches the age of 21 years, and is only then transferred to jail.
3. Children's Court can also order the conditional release of the Child after he attains the age of 21 years.
4. If Children's Court relies upon the Psychologist report then it is a duty of the Court that if juvenile wants to cross- examine the Psychologist, then the court

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NC:2024:KHC-D:7986-DB has to give chance to cross-examination of a Psychologist, if not given then it is against natural justice.

5. Preliminary assessment of mental and Physical capacity of juvenile to commit heinous offence must be concluded expeditiously.
30. Now, as could be seen from the records of this case, the CCL was produced before the JJB on 17.4.2018 at 7:30 p.m. He was remanded to Observation Home till 20.04.2018. Thereafter, he was produced before the JJ Board on 20.4.2018 and subsequent days on 1.06.2018, it was ordered by the JJ Board on hearing both the sides with regard to the preliminary assessment. The DIMHANS, Dharwad was requested to give the preliminary assessment report. It was ordered that, CCL shall be subjected to preliminary assessment with regard to his mental and physical capacity to commit the alleged offences, ability to understand the consequence of the offences and the circumstances in which he allegedly committed offences by Psychologist of remarks from

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NC:2024:KHC-D:7986-DB DIMANS Dharwad. Accordingly, necessary direction was issued to the concerned authorities. Subsequently, charge sheet came to be filed by the investigation officer on 03.7.2018.

31. The Trial court records reveal that, the President of the JJB took cognizance of the offence. After receipt of the report from the Psychologist, DIMANS, 2nd bail application came to be filed by the CCL and bail was granted to him on 14.9.2018. On the same day itself, a detailed order came to be passed under section 15, Section 18(3) of JJ Act, 2015 holding that, age of CCL is 16 years, 10 months, resident of Masur and case against him be transferred to Children's Court for trial of the offences for which he has been charged. During the course of the order at paragraph 8, the learned JJ Board has passed an order and observed as under:

"The Psychologists at DIMHANS, Dharwad, after mental assessment of CCL with regard to ability to understand the consequences of commission of offences have opined that, there is no history suggestive of any diseases or trauma or surgery of or medications use which

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NC:2024:KHC-D:7986-DB may affect potency. There is no history suggestive use of any legal or illegal substances which may alter his behaviour. They ultimately formed an opinion that after comprehensive Psychologist assessment, there is nothing to suggest that the above person is Psychological incapable to perform the sexual act. This report makes it clear that, CCL is mentally able having physical capacity to commit the alleged offences and also ability to understand the consequences of offences, which he allegedly committed the offences in question. Even, that apart DNA test placed on record by the IO also discloses that he can perform the sexual intercourse. These materials, at this juncture, point out that CCL is mentally able person to commit the alleged offences and he is having mental capacity and ability to understand the consequences of commission of alleged offences. Therefore, in our considered opinion, this is a fit case to transfer it to Children Court for trial of the alleged offences".

32. After transfer of the case to the Special Court, that is, Children's Court on 5.8.2019, the Children's Court passed an order stating that, date of birth of CCL is 4.6.2001 as per certificate issued by the Headmaster, Government Primary School, Siddheshwar nagar, Masur.

He has completed the age of 16 years, 10 months, 11 days, as on date of offence. It is a serious and grave offence committed upon victim minor girl by CCL.

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NC:2024:KHC-D:7986-DB Therefore, this CCL has to face trial of this case as an adult as per provisions of Section 19 of JJ Act. The Children's Court will ensure that at the time of passing final order, it is going to consider about rehabilitation of a child and other measures and provisions of section 21 of the said act.

33. It is observed by the JJ Board that, by looking into the provisions of Section 19 of JJ (CPC) Act and gravity of offence committed by CCL upon victim minor girl, based on report of JJ Board and others, this Court is of the opinion that, "the trial of this case has to be conducted against CCL as an adult accused, as contemplated under the said provisions".

34. After transfer of the case, the learned Children's Court also has considered the findings of the JJ Board, and after satisfaction proceeded with trial by passing detailed order.

35. The learned Children's Court has considered the birth certificate issued by the Headmaster, where the

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NC:2024:KHC-D:7986-DB CCL was studying at the relevant point of time. While marking this birth certificate, marked at Ex. P13, no little finger or objection was raised by the CCL. That means, this Ex.P.13 is dated 25.4.2018 is collected by the Investigation Officer wherein the Head master has issued the birth certificate as per the records maintained in the school, stating that a CCL was born on 4.6.2001. Thereby, calculated the age of the CCL as 16 years 10 months 11 days, as on the date of the commission of the offence.

36. From the conjoint reading of the aforesaid provisions of the Act and the Rules framed in the year 2016, in our opinion, wherever words "Children's Court"

or "Sessions Court" mentioned both should be read in alternative. In the sense where Children's Court is available even if the appeal is said to be a maintainable in the Sessions Court, it has to be considered by the Children's Court.

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NC:2024:KHC-D:7986-DB

37. Though it is argued by the counsel for the appellant that, no opportunity is given to the appellant while assessing his exact age, the report so submitted by the DIMHANS authorities do establish that, after medically examining the appellant and after following all the medical formalities, a report was submitted stating that, CCL was aged 16 years 10 months 20 days. The JJ board has rightly assessed the report, evaluated the same and based upon Ex.P.13 birth certificate issued by the school authorities, as on the date of the commission of the offence CCL was aged 16 years 10 months 20 days. For the first time before this court, the appellant has raised this question. No doubt, there is no bar for raising this question before this court in the first appellate Court. But in view of the evidence

placed on record by the prosecution and also the non denial of the fact of the age of the CCL as was aged 16 years 10 months 20 days as on the date of commission of offence by him would establish that, for the sake of objections this question is raised before this court. There is no

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NC:2024:KHC-D:7986-DB effective cross examination directing either to the Investigation officer or to the Doctor who has medically examined the CCL.

38. PW.8 Dr.Praveen Kumar K.S., the Medical Officer, Government Hospital, Davanagere, says that, he has issued Ex.P.15 after medically examining the CCL and he identifies his signature, etc., Thus, on perusal of all these aspects, they do suggest that, as on the date of commission of offence CCL was aged 16 years 10 months 20 days. His date of birth is a conclusive proof showing his date of birth as 4.6.2001. Therefore, now the appellant cannot contend that, he has not been given any opportunity and there is a violation of the principle of natural justice i.e., audi alteram partem by applying A.R.Anthony's case etc., There is no substance in the submission of the counsel for the appellant that, there is no proper assessment of age of the CCL by the JJ board.

39. It was ordered by the JJ Board that, the Doctors of DIMHANS are requested to give their findings to give

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NC:2024:KHC-D:7986-DB their preliminary assessment, ability to understand the consequences of the offences and the circumstance in which he has allegedly committed the offence, by psychological test at Dharwad. This report is not challenged by the appellant by preferring an appeal before the Session's Court. Thus, the said report has become final.

40. In view of all these factual features, it can very well be stated that, the CCL was aged 16 years 10 months 20 days as on the date of the commission of the offence and as per the provisions of the JJ Act, 2015 and Rules 2016, he was rightly tried by the Children's Court. Before the Children's Court, no objections were raised by the CCL. The silence on the part of the CCL goes against his own defence now set up in this appeal. In our considered opinion, the JJB and the Children's Court having followed the aforesaid guidelines if not all, but, all relevant guidelines and have proceeded with trial of the case in accordance with Law. We do not find any factual

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NC:2024:KHC-D:7986-DB or legal error by the JJB and Children's Court. Therefore, point no.1 raised supra is answered against the appellant holding that, CCL was rightly tried by the Children's Court as an adult.

41. So far as the judgment of conviction and order of sentence passed by the trial Court is concerned, it is argued that, there is no proper evidence led by the prosecution and the witnesses examined are

all interested witnesses. Therefore, their evidence cannot be accepted.

42. Ex.P.1 is the complaint, wherein the complainant the mother of the victim girl has stated that, on 15.4.2018 being Sunday, she had been to the house of her parents along with the victim girl. When her child victim girl was playing, this CCL came there had a talk with complainant and took the victim girl with him. In the evening hours, when complainant wanted to answer her nature's call and went towards the hillock area, she noticed that CCL by removing his clothes so also

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NC:2024:KHC-D:7986-DB removing the clothes of the victim girl was sexually intercourse with the victim girl. It was 6.30 p.m. at that time. She noticed the illegal act of the CCL and scared herself and went there and made the CCL to get up. CCL went away by wearing his pant. On noticing the private part of the victim girl, she noticed that there was tenderness and pain and the said private part of victim girl had become red colour. Thus, it is alleged that, the complainant is an eye witness to the incident. At that time, she was accompanied with her mother. Thereafter, she lodged a complaint at 10.00 p.m. by appearing before the Hirekerur Police Station, which is registered in Crime No. 119 of 2018 for the aforesaid offences.

43. It is the case of the prosecution that, after filing the complaint, the police came to the scene of offence, conducted the spot panchanama, took the photographs as per Ex.P.3 to P5. While marking these photographs, no objections were raised by the defence. Ex.P.6 is the scene of offence panchanama, wherein it

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NC:2024:KHC-D:7986-DB shows that, where exactly the said offence has taken place. It is accompanied with this sketch. Exs.P7, P8 are the photographs showing that, it was CCL who had shown the scene of offence to the Panchas and Investigating Officer. This fact is also not disputed by the defence. Ex.P9 is the CD, P.10 is a site sketch prepared by the Engineer. To show that, it is the victim girl belongs to the backward class from the office of the Tahsildar, Ratti Halli, the certificate has been obtained by the Investigating Officer, showing that victim girl belongs to Hindu (Thalwar) being the Scheduled Tribe. Ex. P12 is the birth certificate of a victim girl showing her date of birth as 5.10.2015. This certificate of birth is not disputed. It shows that the victim girl was a baby when the said incident has taken place. Ex. P13 is the birth certificate issued by the Headmaster of Masur Government Primary School. To show that CCL belongs to Nekar community, a certificate from Rattihalli Tahsildar is obtained as per Ex.P.14. These documents so marked in this case are not disputed by the defence.

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NC:2024:KHC-D:7986-DB

44. To show that CCL was capable of sexual intercourse a note sheet is produced at Ex. P15. This shows that CCL was medically examined by the Doctor. Ex.P.16 is the letter addressed by the Medical Officer, Taluka Government Hospital to the Forensic laboratory for giving opinion. Ex.P.17 is a Medico Legal Examiner's report of a sexual violence of victim girl. Before the Doctor, it was narrated by the mother - complainant that CCL was aged 16 years, 10 months 20 days used to play with victim girl, carried her to the backyard of his house at 6:30 p.m. and undressed her, removed her panty and was found sleeping on the girl with his pant open and by lying was trying to have a sexual intercourse with the girl. Mother with the other relative tried to catch the CCL and brought to the police station.

45. On medically examining the victim girl, it was opined by the Doctor that, the other parts of the body of the victim girl was found to be normal, but, "it was noticed that "inner aspect of upper arms, tenderness and

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NC:2024:KHC-D:7986-DB contusion over the private part". The Doctor has given an opinion that, there are "evidences suggestive of a forceful sexual act." Though the Forensic Laboratory has given a certificate of examination, it was opined that semen stains were not detected in item nos.1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 and skin tissue was not detected in item no.9. But the evidence of PW.1 complainant is not falsified by the defence. She is an eye witness. So also to show that, where exactly the said offence has committed, the letter issued by the Gram Panchayat, Masur, is produced at Ex. P.19.

46. So far as the oral evidence is concerned, PW.1 being the complainant reiterated the contents of the complaint in her evidence on both. She is consistent in her evidence that, her child victim girl was aged two and half years when the incident took place. She had been to Masur Village, to her parent's house, as she used to have a frequent visit to her parents house. She was knowing this CCL. According to her evidence, whenever she takes

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NC:2024:KHC-D:7986-DB her child, victim girl to her parent's house, the CCL used to take the victim girl with him and used to bring her back. She states, that on 15.04.2018 Sunday at 6.00 p.m., CCL came to the house of her parents. At that time, victim girl was playing on the Katta in front of the house. He took her towards backyard, towards the Siddappana Gudda. Even after half an hour, he did not return. When she went to attend her nature's call and proceeded towards Siddappana Gudda, she noticed in the backyard of the house of the CCL, that the CCL has removed his pant and also the under garment of her victim daughter and was doing the sexual intercourse. On seeing her, he worn his pant and went away. She told that, she had faith in him but he is doing this illegal act. She bet him. She noticed that the victim's private part has become red in colour. Thereafter, she came to the house, took her mother with her and lodged a complaint thereafter.

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NC:2024:KHC-D:7986-DB

47. Though this P.W.1 has been directed with severe and intensive cross-examination but nothing worth is elicited. The defence that has been set up by the accused CCL is that, as the father of the CCL used to consume alcohol and do galata, therefore, the complainant being aggrieved by the galata, the CCL has been falsely implicated. But this suggestion is flatly denied by PW.1 in material particulars. Though lengthy cross examination is directed to her but nothing worth is elicited to disbelieve her version given in her examination

-in-chief.

48. PW2 Girish Bhimappa Olekar is the PDO who has issued the Ex.P.6. He was also pancha to the panchanama. His presence at the time of Panchanama and Ex.P.6 is not disputed by the defence. Through the evidence of PW.2, panchanama Ex.P.6 is duly proved in accordance with law.

49. PW.3 Manjamma Nagarajappa Vaddar is none other than the mother of the complainant. She

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NC:2024:KHC-D:7986-DB corroborated the evidence of P.W.1 in material particulars. From her evidence, it can be stated that she is not an eyewitness and came to know about the said fact only through her daughter. Though she has been cross examined at length by the defence, but nothing worth is elicited so as to disbelieve her version given in the examination in chief.

50. PW.4 Sujata Basavaraj Bhuvi is the sister of the complainant and she too is not a witness, but she has signed the panchanama as per her evidence. Her evidence can be believed to the extent that, she came to know about the said incident through her sister.

51. PW.5 Jagdish Jayappa Baligar is none other than the husband of P.W.1 - complainant. As he is not an eyewitness, much value cannot be attached to the evidence of PW.5.

52. PW.6 Ranjitha Maravalli is a relative of complainant and she came to know about the said incident through P.W.1 only. She heard the noise of P.W.1

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NC:2024:KHC-D:7986-DB according to her evidence. This fact is not denied by the defence. She has deposed ignorance in the cross examination.

53. PW.7 Subhash Chandra Shivappa, was an Engineer at the relevant time who has issued Ex.P.10 the sketch. The contents of the sketch are not denied in the cross examination.

54. PW.8 Dr. Praveen Suresh Rao Kumar is Medical Officer, who has medically examined CCL on 16.4.2018. He noticed no injuries on the body of the CCL during his medical examination. According

to his evidence, CCL was capable to perform sexual intercourse. This fact is not denied in the cross examination.

55. P.W.9 Dr.Netravati Narayan Sirsikar was the Doctor at the relevant time, who medically examined the victim girl after obtaining the consent from the victim's mother, she conducts the examination of victim girl. During her general physical examination, she has not found any injuries on the body. But during the genital

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NC:2024:KHC-D:7986-DB examination, she noticed tenderness and contusion on the perineum. She did not mention about the hymen as it was infantile (very small). There was tenderness and reddish congestion present on Urethra and external genetalia. She collected the clothes of the victim and swab from perineum and vagina for the purpose of chemical analysis.

56. According to her clinical opinion, there are evidence suggestive of forceful sexual act on the victim girl. The victim being aged two and half years, not in a position to explain the history, but the victim was saying the name as "CtÚ" and also saying "CtÚ ®äí ªÁiÁrzÀ, CtÚ£À À ÁÄ ¹zÉÝÃ±À JAZÀÄ ªÀÄUÀÄ °ÉÃ¼ÀÄwvÀÄÛ". This fact was stated by the °É,g Doctor is not denied by the defence in material particulars. Except denial nothing is elicited.

57. P.W.10 Anil Kumar Boomreddy was the Investigation Officer at relevant time. According to him, on taking up the investigation, he conducted investigation and obtained various documents i.e., more

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NC:2024:KHC-D:7986-DB importantly, the personal details of the CCL, showing date of birth, etc., No effective cross examination is directed to this witness to disbelieve that, the investigation is not proper. Even the law says that, even if the investigation is perfunctory, if there is a cogent evidence led by the prosecution, that will not come in the way of finding the accused guilty.

58. P.W.11 Hulgappa Hanamappa Vaddar, was the PSI at the relevant time, who registered the crime and set the law in motion.

59. Thus, on cumulative reading of the evidence led by the prosecution and also the submission of the both the side, It can be stated that, in the light of our findings and the reasons, as discussed for arriving at such a finding, we accept the findings of the JJB of holding that, the CCL was an adult, was to be tried as an adult member, and accordingly, the JJ Board is right in finding the CCL as an adult accused. We accept that, the date of birth of the appellant CCL as mentioned in the

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NC:2024:KHC-D:7986-DB certificate issued by the headmaster of Masur School dated 20.5.2018 is correct. A copy of which is produced before this court is to be accepted for determining the age of the CCL at the time of Commission of the offence of which he has been convicted. Going by that certificate, his age at the time of commission of the offence was 16 years, 10 months, 20 days. Thus he was a juvenile on the date of the commission of the offence and he was rightly tried by the Children's Court and Children's Court has convicted him in terms of the provisions of the Juvenile Justice Act 2015. This shall be deemed to be the true age of the CCL, who was tried and convicted.

60. The following table shows the quantum of sentence imposed on CCL:

Sl.No.	Offence	Sentence and fine
1.	Section 366 of IPC	Rigorous imprisonment for a period of 5 years and shall pay fine of Rs. 2000/-. In default of payment of fine amount, the accused shall undergo simple imprisonment for - 61 -

NC:2024:KHC-D:7986-DB

2.	Section 6 of POCSO Act.	further period of one year. Rigorous imprisonment for a period of 10 years and shall pay fine of Rs. 5000/-. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of 6 months.
3.	Section 3(2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.	Undergo life imprisonment and shall pay fine of Rs. 5000/-. In default of payment of fine amount, the accused shall undergo rigorous imprisonment for further period of five years.

61. The CCL was also tried by the trial Court for the alleged offence under Section 3(2)(v) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989. On scrupulous reading of the entire evidence placed on record by the prosecution either PW.1 or any other witnesses including the IO have stated in their respective evidence that CCL was knowing that the

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NC:2024:KHC-D:7986-DB victim baby belongs to the Scheduled Tribe. Except producing the caste certificate of the baby as per Ex.P11 and of her mother, no other evidence is placed on record by the prosecution. Even during the course of the argument, no such submission was made by the prosecution.

62. On reading the provisions of Section 3(2)(v) of the aforesaid Act, it is a mandate that the accused must have knowledge about the caste of the victim. In this case, the victim baby just 2 1/2 years of age and had no sense of its caste. So also accused is a juvenile aged in between 17 and 18 years as per the evidence placed on record. Unless the accused knew about the caste of the victim, this provision as amended in the year 2016 has no application. Therefore, the prosecution has utterly failed to prove the offence against CCL under section 3(2)(v) of the SC & ST (Prevention of Atrocities) Act, 1989. Therefore, the CCL is to be acquitted for the aforesaid offence by giving benefit of doubt.

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NC:2024:KHC-D:7986-DB

63. The learned counsel for the appellant Sri S.D.Babaladi submits that, the offence alleged to have been committed by the CCL he was in between 17 and 18 years and a boy having good future. He is coming from a poor family belonging to Nekar community. Even his family life is not conducive because of conduct of his father. It has come in the evidence that his father is a drunkard. So looking to the family status and the age of the CCL, he submits to show some leniency in imposing the sentence by modifying the sentence already imposed by the trial Court.

64. As against this submission, the learned Addl. SPP submits that taking into consideration of all the aspects of the case and considering the mitigating circumstances, the trial Court has rightly sentenced the CCL. Therefore, he submits not to interfere to the said sentence.

65. As submitted by the learned counsel for the CCL, except the age and family background of the CCL,

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NC:2024:KHC-D:7986-DB there are no mitigating circumstances brought on record by the defence.

66. As there is cogent and acceptable evidence lead by the prosecution, we do not find any factual or legal error in finding the accused guilty of the commission of the aforesaid offences. Therefore, in view of the discussion made above on various points for consideration, we do not find any factual error or legal error committed by the Trial Court in finding the accused guilty of committing the offences.

67. At this stage, this court is obliged to observe that; the Juvenile Justice Boards (JJBS) and Children's Courts shall have to follow the guidelines to assess the age of the Juvenile and shall take appropriate steps in accordance with law. We request all the JJB's and Children's Court to follow the same as narrated in the course of this judgment.

68. In view of above discussion, the appeal succeeds in part. The accused-CCL is entitled for

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NC:2024:KHC-D:7986-DB acquittal for the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

Resultantly, we pass the following:

ORDER

- i) Appeal is allowed in-part.
- ii) The Judgment of conviction and order of sentence dated 09.04.2021 passed by the Additional District and Sessions Judge, FTSC-1, Haveri for the offences under Sections 366 of IPC, Section 6 of the POCSO Act is confirmed.
- iii) Whereas, the order of conviction and sentence passed for the offence under Section 3(2) (v) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989 dated 09.04.2021 passed by the Additional District and Sessions Judge, FTSC-1, Haveri is hereby set aside and the consequently, the - CCL is acquitted of the said charges.

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NC:2024:KHC-D:7986-DB

- iv) The recommendation made by the Trial Court to decide about the quantum of compensation to be awarded to the victim remains undisturbed.
- v) Copy of this judgment be circulated to all the Juvenile Justice Boards (JJBS) and the Children's Courts in the State for necessary guidance as well as to the Karnataka Judicial Academy Bangalore for reference.

vi) Send a copy of this judgment along with original records to the trial court also copy of the judgment to the concerned Superintendent of Jail for reference and necessary action.

We place on record the appreciation for the assistance rendered by Ms. Shreya Sunil Utture, Law Clerk-Cum-Research Assistant.

Sd/-

JUDGE Sd/-

JUDGE PSJ/Sk/-

Shri Umesh S/O Hanamanth Murgod vs Smt Maheshwari Alias Sawata W/O Umesh ... on 4 April, 2024

Author: Ravi V.Hosmani

Bench: Ravi V.Hosmani

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NC: 2024:KHC-D:6163
WP No. 101739 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 4TH DAY OF APRIL, 2024
BEFORE

THE HON'BLE MR JUSTICE RAVI V.HOSMANI
WRIT PETITION NO. 101739 OF 2024 (GM-CPC)

BETWEEN:

SHRI UMESH S/O. HANAMANTH MURGOD,
AGE: 36 YEARS,
OCC: POLICE AT FIRE DEPARTMENT,
A.P.M.C. AMARGOL, R/O. BEEDAKI, TQ: RAMDURG,
NOW RESIDING AT HUBBALLI,
QUARTERS OF THE FIRE DEPARTMENT,
SHREE NAGAR CROSS, HUBBALLI,
DIST: DHARWAD-580009.

...PETITIONER

(BY SRI H.M. DHARIGOND, ADVOCATE)

AND:

SMT. MAHESHWARI @ SAWATA
W/O. UMESH MURGOD,
AGE: 33 YEARS, OCC: HOUSEHOLD WORK,
R/O. BEEDAKI, TQ: RAMDURG,
NOW RESIDING AT

CHANDRASHEKAR

C/O. SHEKAPPA S/O. BASAPPA KAMBLI,

LAXMAN

GUDVINKATTI VILLAGE, TQ: KUNDAGOL,

KATTIMANI
Digitally signed by

DIST: DHARWAD-581113.

CHANDRASHEKAR

LAXMAN KATTIMANI

Location: HIGH COURT
OF KARNATAKA

...RESPONDENT

DHARWAD BENCH

Date: 2024.04.08

15:02:04 +0530

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 12-09-2017 PASSED ON IA NO. I/2016 IN MC NO.5/2016 PASSED BY THE SENIOR CIVIL JUDGE RAMDURG VIDE ANNEXURE-D AND PROCEEDINGS INITIATED UNDER ORDER 21 RULE 11 OF CPC FILED BY THE RESPONDENT IN EX. P NO.41/2019 ON THE FILE OF SENIOR CIVIL JUDGE, RAMDURG PRODUCED AT VIDE ANNEXURE-H.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:6163
WP No. 101739 of 2024

ORDER

This writ petition is filed seeking for following relief:

"Issue a writ in the nature of Certiorari to quash the impugned order dated 12-09-2017 passed on IA no. I/2016 in MC no.5/2016 passed by the Senior Civil Judge Ramdurg vide Annexure-D and proceedings initiated Under Order 21 Rule 11 of CPC filed by the respondent in Ex.P.41/2019 on the file of Senior Civil Judge, Ramdurg produced at vide Annexure-H."

2. Sri H.M.Dharigond, learned counsel for petitioner submitted that marriage of petitioner with respondent was celebrated on 08.06.2014 as per religious customs. They lived together for only two days and thereafter, respondent left for her maternal home. Subsequent efforts for reconciliation failed. Hence, petitioner was constrained to file M.C.no.5/2016 under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights. On appearance, respondent filed application for interim maintenance under Section 24 of Hindu Marriage Act. Though it was opposed, on 12.09.2017, an order was passed directing petitioner to pay interim maintenance of Rs.2,500/- per month and Rs.5,000/- towards litigation expenses until disposal of petition. Thereafter, when petitioner sought to withdraw his petition, same was permitted reserving liberty to respondent, to recover interim maintenance.

NC: 2024:KHC-D:6163

3. Suppressing above, respondent filed petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('D.V. Act', for short) and filed interim application for maintenance. Same was allowed on 26.09.2016 directing petitioner to pay Rs.2,500/- per month to respondent until further orders.

4. Subsequently, petitioner filed M.C.no.44/2018 under Section 13(1) (ia) and (ib) of Hindu

Marriage Act. Said petition was decreed on 24.06.2021. In meanwhile respondent had filed Ex.P.no.41/2019 for recovery of arrears. Challenging order granting interim maintenance in M.C.no.5/2016 and Ex.P.no.41/2019 on ground of maintainability, this petition was filed.

5. It was submitted, admittedly, interim maintenance was granted in M.C.no.5/2016. Upon its disposal as withdrawn, interim order would merge with final order. Therefore execution petition would not be tenable. Further, award of interim maintenance in proceedings under D.V. Act was without any reasons and would be unsustainable when only intention of respondent was to harass petitioner. On above grounds sought for allowing petition.

NC: 2024:KHC-D:6163

6. Heard learned counsel and perused writ petition.

7. From above, it is seen that marriage of petitioner with respondent is not in dispute. Likewise award of interim maintenance in M.C.no.5/2016 is also not in dispute. Though said petition was withdrawn, order passed expressly permitted respondent to recover arrears. Consequently, challenge against execution petition filed for recovery would be justified.

8. Insofar as interim maintenance awarded in proceedings under D.V.Act, it is seen that petitioner is an employee of Fire Department and withdrawal of petition for restitution would prima facie justify respondent residing separately from petitioner. And as petitioner is Government employee, interim maintenance of Rs.2,500/- would not call for interference on quantum also. No grounds for interference made out.

9. Writ petition is dismissed.

Sd/-

JUDGE CLK

Smt Akshata W/O Mahesh Oswal vs Sri Mahesh S/O Hirachand Oswal on 21 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

REV.PET FAMILY COURT NO.100136 OF 2023
C/W
REV.PET FAMILY COURT NO. 100191 OF 2023

IN RPFC NO.100136/2023

BETWEEN:

SRI MAHESH S/O. HIRACHAND OSWAL,
AGED ABOUT 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/AT: FLAT NO. 402, 25/1,
MEHTA COLONY, E-WARD,
SAMRAT NAGAR, KOLHAPUR CITY,
KOLHAPUR, MAHARASHTRA.

...PETITIONER

(BY SRI VAIJAYANTHIMALA B., AND
MAMATHA B.L., ADVOCATES)

Digitally
signed by V N
BADIGER
Location:
High Court of
Karnataka

AND:

1. SMT. AKSHATA

W/O. MAHESH OSWAL,
AGED ABOUT 37 YEARS,
OCC: HOUSE WIFE,
R/AT: C/O. SMT. PREMA ANIL
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
OPP. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD,
TILAKWADI, BELAGAVI,
PIN CODE - 590 001.

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGED ABOUT 8 YEARS,
OCC: STUDENT,
R/AT. C/O. SMT. PREMA ANIL,
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
POO. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD, TILAKWADI,
BELAGAVI - 590 001.

(RESPONDENT NO.2 BEING MINOR
IS REPRESENTED BY HIS NEXT FRIEND
MOTHER RESPONDENT NO.1)

... RESPONDENTS

(BY SRI NAGARATNA S. PATTAR,
SHAMSUNDAR N. PATTAR,
S.B. DEYANNAVAR, ADVOCATE FOR R1;
R2 IS MINOR R/BY R1)

THIS RPFC IS FILED UNDER SEC.19(4) OF THE FAMILY
COURT ACT, AGAINST THE JUDGMENT AND ORDER DATED
07.07.2023, IN CRL.MISC. NO.543/2018, ON THE FILE OF THE
PRINCIPAL JUDGE, FAMILY COURT, BELAGAVI, PARTLY
ALLOWING THE PETITION FILED UNDER SEC.125 OF CR.P.C.
AND ETC.,

IN RPFC NO.100191/2023

BETWEEN:

1. SMT. AKSHATA
W/O. MAHESH OSWAL,
AGE: 37 YEARS,

OCC: HOUSEWIFE,
R/O C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY
OPP. ASHRAYA VIDYA ASHRAM,
DATTA MANDIR ROAD, TILKWADI

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

BELAGAVI.

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGE: 08 YEARS, OCC: STUDENT,
R/O. C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY,
OPP. ASHRAYA VIDYA ASHRAM,
DATA MANDIR ROAD, TILAKWADI,
BELAGAVI.

(PETITIONER NO.2 BEING
MINOR IS REPRESENTED BY
HIS GAURDIAN MOTHER
PETITIONER NO. 1)

...PETITIONERS

(BY NAGARATHNA S. PATTAR AND
S.B.DEYANNAVAR, ADVOCATES)

AND:

SRI MAHESH
S/O. HIRACHAND OSWAL,
AGE: 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/O FLAT NO 402, 25/1, MEHTA COLON,
E-WARD, SAMRAT NAGAR,
KOLHAPUR CITY, KOLHAPUR,
MAHARASHTRA.

...RESPONDENT

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY
COURT ACT, 1984, PRAYING TO, THE ORDER DATED
07.07.2023 PASSED IN CRL.MISC.543/2018 BY THE PRINCIPAL
JUDGE, FAMILY COURT, BELAGAVI AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

ORDER

1. This petition RPFC No.100136/2023 is filed by the husband aggrieved by the order dated 07.07.2023 passed in Crl.Misc.No.543/2018 on the file of the Principal Judge, Family Court, Belagavi, by which while partly allowing the petition filed under Section 125 of Cr.P.C., the Family Court has directed the petitioner herein to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2 from the date of petition.
2. The above petition for maintenance seeking grant of Rs.25,000/- per month to respondent No.1 and Rs.15,000/- per month to respondent No.2 was filed under Section 125 of Cr.P.C. contending that respondent No.1 is the legally wedded wife of the petitioner herein and their marriage was solemnized on 07.01.2014 and that the respondent No.2 was born out of the said marriage. That soon after the marriage, respondent No.1 was subjected to physical and mental harassment at the hands of the NC: 2024:KHC-D:8323 petitioner herein and his mother. Due to the ill-treatment, the respondent No.1 along with the child started staying with her parents from the year 2016 onwards. That the petitioner herein despite having sufficient income in excess of Rs.2,00,000/- from his business from Ugam Metal Industries, had neglected and refused to maintain his wife. Several other allegations of ill-treatment have been made in the petition. Respondent No.1 had also initiated proceedings under the provisions of Women Domestic Violence Act, 2005 and the petitioner herein has initiated proceedings under the Guardians and Wards Act, 1890. Under the circumstances, the above petition under Section 125 of Cr.P.C. was filed seeking maintenance.
3. Statement of objection filed by the petitioner herein admitting his relationship with the respondents, however denied all the allegations of ill-treatment and harassment. It is also denied that the petitioner herein is having income in excess of Rs.2,00,000/- and he owning a flat and two houses as contended by the respondent No.1 NC: 2024:KHC-D:8323 wife. It is contended that respondent No.1 was not interested to stay with the petitioner and his mother, which caused discord amongst them. That the respondent No.1 herself has left the matrimonial home refusing to stay with the petitioner. That he had shown all the care and concern towards the respondents. That the petitioner is working in a shop earning salary less than Rs.9,000/- per month and the said income is not sufficient to maintain them. On the other hand, respondent No.1 is a MBA graduate, capable of earning for herself, as such, she do not require any financial assistance from the petitioner.
4. Considering the pleading and evidence led in by the parties, the Family Court allowed the petition holding that there were sufficient reasons and grounds for the respondent No.1 not to stay with the petitioner. The Family Court also on assessment of the evidence produced by the parties, came to the conclusion that the petitioner be directed to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2.

NC: 2024:KHC-D:8323 Being aggrieved by the same, the petitioner-husband is before this Court seeking reduction of maintenance amount and respondent-wife and child is before this Court seeking enhancement of maintenance amount.

5. Learned counsel for the petitioner-husband reiterating the grounds urged in the memorandum of petition submitted that the Family Court grossly erred in accepting the contention of respondent wife and child of petitioner having income as claimed by them. She submits that the so called Ugam Metal Industries is running scrap business and standing in the name of the mother of the petitioner and said business is not earning amount as claimed by the respondents. She submits that the affidavit of income and expenditure of the petitioner was filed before the Family Court and the same has remained uncontested. She submits that the income being drawn by the petitioner is just about Rs.9,000/- and the impugned order directing the petitioner to pay Rs.12,000/-

NC: 2024:KHC-D:8323 in aggregate, would cause serious hardship. Hence, the petition.

6. On the other hand, learned counsel appearing for the respondent wife who has also filed petition for enhancement of maintenance, contend that the Family Court in its judgment at paragraph 29 onwards has dealt in detail with regard to income and the properties of the petitioner and has declined to accept the contention of the petitioner of he not owning the Ugam Metal Industries. She also submits that in that view of the matter, inference needs to be drawn that the petitioner himself owning Ugam Metal Industrial and earning amount in excess of Rs.2,00,000/- per month. She also submits that the petitioner is owning immovable properties, earning rental income from it. Thus, she submits that sufficient material is placed on record to justify the claim of the respondents, of the petitioner earning in excess of Rs.2,00,000/-, which eventually should be considered while determining the maintenance to be paid to the respondents. Hence, she NC: 2024:KHC-D:8323 submits that the maintenance amount as awarded by the Family Court be enhanced to Rs.25,000/- to respondent No.1 and Rs.15,000/- to respondent No.2.

7. Heard and perused the records.

8. The marriage between the petitioner and respondent No.1 and respondent No.2 being their child, is not in dispute. Petitioner and respondents staying separately from the year 2016 is also not in dispute. The petition and counter petition under different provisions of family law have been filed by the parties sufficient to infer that there is serious discord between the parties. Though the respondent wife has contended the petitioner having income in excess of Rs.2,00,000/-, the material evidence brought on record would not justify the said claim. The Family Court in the impugned judgment at paragraphs 29 to 33 has assessed and analyzed the evidence produced by the parties and has thereafter come to the conclusion that the respondents claim would be justified if they are

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NC: 2024:KHC-D:8323 paid Rs.8,000/- and Rs.4,000/- per month respectively. Accordingly, partly allowed the petition.

9. In the petition filed by the husband seeking reduction, except contending that he does not own and posses Ugam Metal Industries, nothing is being urged. Even if he is earning Rs.9,000/- as claimed, no satisfactory material in that regard is produced either. Petitioner being healthy and able bodied person cannot claim his inability to pay the amount as awarded by the Family Court. Similarly, in the absence of any acceptable material on record regarding the petitioner having income in excess of Rs.2,00,000/-, the respondents cannot be heard for enhancement of maintenance as claimed.

10. In the light of the pleadings and material evidence made available by the parties, including filing of the affidavits as required, in the considered view of this Court, the Family Court has arrived at a just and reasonable conclusion directing the petitioner herein to

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NC: 2024:KHC-D:8323 pay Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2.

11. In that view of the matter, for the present, this Court do not see any reason to interfere with the order passed. Accordingly, both the petitions are dismissed confirming the order passed by the Family Court.

SD/-

JUDGE KGK/CT-ASC

Smt Anitha vs Mr S G Manohar on 12 June, 2024

Author: V Srishananda

Bench: V Srishananda

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NC: 2024:KHC:20724
CRL.RP No. 334 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 12TH DAY OF JUNE, 2024
BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA
CRIMINAL REVISION PETITION NO. 334 OF 2021

BETWEEN:

SMT. ANITHA
AGED ABOUT 37 YEARS
W/O. S G MANOHAR,
R/AT SHREE NIDHI, BEHIND CHAKRA SOUDHA,
HONNAKATTE, KULAI, MANGALORE-575001.

...PETITIONER
(BY SRI. DEEPAK FOR SRI. KESHAVA BHAT A., ADVOCATES)

AND:

MR. S G MANOHAR
AGED ABOUT 46 YEARS,
S/O. B.N.GOPAL KRISHNA,
R/AT NO. 464, 10TH MAIN, 6TH CROSS,
VIVEK NAGAR, BANGALORE-560040.

...RESPONDENT

Digitally signed by
VEDAVATHI A K
Location: High
Court of
Karnataka

(BY SMT. KALPANA P.V., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING
TO SET ASIDE THE ORDER DATED 23.07.2020 PASSED BY THE
I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K.,
MANGALURU IN CRL.A.NO.6/2015 VIDE ANNEXURE-A BY
WHICH ORDER THE LEARNED SESSIONS JUDGE HAS
CONFIRMED THE ORDER DATED 07.10.2014 PASSED BY THE
J.M.F.C.(II COURT), MANGALURU IN M.C.NO.24/2013 VIDE
ANNEXURE-B, AND ALLOW PRESENT PETITION WITH COST
THROUGHOUT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:20724
CRL.RP No. 334 of 2021

ORDER

Wife is the revision petitioner who suffered an order of dismissal of petition filed under provisions of Protection of women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V.Act' for the sake of brevity) which was also the subject matter of Criminal Appeal No.6/2015 which also dismissed on merits.

2. Learned counsel for revision petitioner Sri. Deepak for Sri. Keshav Bhat contends that both Courts have not properly appreciated the scope of proceedings before the learned Trial Magistrate under the provisions of D.V. Act and has wrongly dismissed the request of petitioner-wife-petitioner and sought for allowing the revision petition.

3. Per contra, learned counsel Smt. P V Kalpana representing the respondent-husband supports the order and contends that the petition filed by husband seeking restitution of conjugal rights came to be allowed and appeal filed by the petitioner-wife against the said order was also dismissed and the divorce petition filed by the petitioner is also dismissed. As such, there cannot be any attribution of desertion on the part NC: 2024:KHC:20724 of respondent-husband in the matrimonial relationship and therefore, both the Courts have rightly rejected the prayer of petitioner-wife and sought for dismissal of revision petition.

4. Having heard the parties, this Court perused the material on record meticulously.

5. On such perusal of material on record, it is crystal clear that there is no dispute of matrimonial relationship between the parties. Further, on account of desertion on the part of petitioner-wife without proper reason, respondent- husband sought for restitution of conjugal rights by filing appropriate application before the Family Court, D.K.Mangaluru. Same was allowed and against the said order, petitioner-wife preferred an appeal before this Court. Appeal on merits, came to be dismissed. Further, the petition filed by petitioner-wife seeking divorce was dismissed and it has become final.

6. In the meantime, the allegations leveled against the husband by petitioner-wife that there was a domestic violence which all contested came to be dismissed.

NC: 2024:KHC:20724

7. Learned Judge of the First Appellate Court also took into consideration of all the relevant aspects of the matter and upheld the order of the learned Trial Magistrate in dismissing the petition filed by

the petitioner-wife under provisions of D.V. Act.

8. When the material on record has been properly appreciated by the duly constituted Courts, in the revisional jurisdiction having regard to the scope of revision, this Court cannot revisit into the factual aspects and admit the present revision petition for further consideration.

9. Accordingly, the following:

ORDER a. Admission declined.

b. Revision petition dismissed.

Sd/-

JUDGE SSD

Smt. Dakshayini G.P vs Sudeendra Kumar on 4 June, 2024

Author: H.T. Narendra Prasad

Bench: H.T. Narendra Prasad

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NC: 2024:KHC:19159
CP No. 207 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD
CIVIL PETITION NO. 207 OF 2023

BETWEEN:

SMT. DAKSHAYINI G.P
W/O SRI SUDEENDRA
AGED ABOUT 46 YEARS
D/O LATE PUTTACHARI
R/O HARISCHANDRAPURA
GONIKOPPAL, PRESENTLY R/AT
7TH BLOCK, GANDHINAGAR
VIRAJPET TOWN & TALUK
KODAGU DISTRICT.

...PETITIONER
(BY SRI. HANUMANTHAPPA HARAVI GOWDAR., ADVOCATE)

AND:

SUDEENDRA KUMAR
AGED ABOUT 46 YEARS

Digitally signed by
HEMALATHA A S/O LATE L. RAGHAVENDRA
Location: High R/AT TARNAPURI VILLAGE
Court of HUNSUR TALUK-571105.
Karnataka ...RESPONDENT
(BY SRI. SYED AMEER., ADVOCATE [ABSENT])

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF
THE CPC, PRAYING TO TRANSFER M.C. NO. 18/2023
PROCEEDINGS PENDING ON THE FILE OF SENIOR CIVIL JUDGE
AT HUNSUR TO HONBLE CIVIL JUDGE AT VIRAJPET. AND
CONSEQUENTLY ALLOW THIS PETITION, IN THE INTEREST OF
JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition under Section 24 of CPC is filed by the petitioner-wife seeking for transfer of M.C.No.18/2023 filed by the respondent-husband pending on the file of Senior Civil Judge and JMFC, Hunsur to the file of the Civil Judge, Virajpet.

2. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 22.06.2003 at Umamaheshwari temple choultry, Gonikoppal, as per Hindu rites and customs. After marriage the petitioner was living in her matrimonial house. Out of their wedlock a daughter was born. After some time, as matrimonial disputes arose between the parties, the petitioner started living separately with her brother and daughter in Gonikoppal. Thereafter, the petitioner-wife filed Criminal Misc. Petition No.39/2023 before the Civil Judge, Virajpet under Section 12 of the Protection of Women under Domestic Violence Act, 2005 (for short, 'DV Act') NC: 2024:KHC:19159 and the respondent-husband filed a divorce petition in M.C.No.18/2023 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act before the Senior Civil Judge and JMFC, Hunsur. Since the petitioner is residing with her brother and daughter at Gonikoppal, she filed this petition for transfer of M.C.No.18/2023 filed by the respondent- husband to the file of Civil Judge, Virajpet.

3. The learned counsel for the petitioner-wife contended that after the matrimonial dispute the petitioner is residing with her brother and daughter at Gonikoppal. She filed a Criminal Misc. No.39/2023 before the Civil Judge, Virajpet under the DV Act against the respondent- husband. The respondent-husband filed a divorce petition in M.C.No.18/2023 on the file of the Senior Civil Judge & JMFC, Hunsur. Hunsur is about 75 kms. from Gonikoppal and it is difficult for her to travel from Gonikoppal to Hunsur to attend the case and it causes more inconvenience to the petitioner. Hence, the learned counsel sought to allow the petition.

NC: 2024:KHC:19159

4. When the matter was called in the morning session none appeared for the respondent. Even in the afternoon session also there is no representation on behalf of the respondent.

5. Heard the learned counsel for the petitioner. Perused the petition papers.

6. It is not in dispute that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 22.06.2003 at Umamaheshwari temple choultry, Gonikoppal, as per Hindu customs. After the marriage the petitioner was living in her matrimonial house. Out of

wedlock, a daughter was born. After some time, since there was a difference of opinion between the parties, the petitioner started living separately with her brother and daughter at Gonikoppal. Thereafter, she filed Crl.Misc.No.39/2023 under Section 12 of DV Act and the respondent-husband filed M.C.No.18/2023 before the Senior Civil Judge and JMFC, Hunsur for divorce. Since the distance between Gonikoppal and Hunsur is about 75 kms., it is difficult for the petitioner to travel to NC: 2024:KHC:19159 Nagamangala to prosecute the case. She is residing with her brother and daughter and there are no persons to accompany her to attend her case at Hunsur.

7. This Court in the case Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407 at Paragraph No.15 held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience that must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common questions of fact NC: 2024:KHC:19159 and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiua Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr.

MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

8. Therefore, taking note of the inconvenience as made out by the petitioner and the law laid down in the case of Smt.M.V.Rekha (supra), which provides that the convenience of the wife is an aspect that is to be taken note of while considering the transfer petitions, petition deserves to be allowed. Accordingly, the following order is passed:

- i) The petition is allowed.
- ii) The case in M.C.No.18/2023 on the file of Senior Civil Judge and JMFC, Hunsur is hereby withdrawn and transferred to the file of Civil Judge, Virajpet.

NC: 2024:KHC:19159

- iii) The transferor Court is hereby directed to transmit the entire records to the transferee court.

iv) The transferee court, after hearing the parties is directed to dispose of the said case, as expeditiously as possible and in accordance with law.

Sd/-

JUDGE CM

Smt Manjula vs Sri B Shivakumar @ A Shivanna on 11 June, 2024

- 1 -

NC: 2024:KHC:20585-DB
MFA No.242/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL No.242/2017 (MC)

BETWEEN:

SMT.MANJULA
W/O SHIVAKUMAR @ SHIVANNA
AGED ABOUT 34 YEARS
R/AT DUDDA MALLAPURA
CHANNAGIRI TALUK
DAVANAGERE DISTRICT

(BY SRI D.S.SHIVANAND FOR SRI M.V.HIREMATH, ADVOCATES)

AND:

SRI B SHIVAKUMAR @ A SHIVANNA

Digitally

S/O BASAVARAJAPPA
AGED ABOUT 40 YEARS
R/AT KHALAGHATTA VILLAGE
B.DURGA HOBLI, HOLALKERE TALUK

(BY SBT N D ONKABAPPA ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28(1) OF HINDU MARRIAGE ACT, 1955 PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 24.08.2016 PASSED BY SENIOR CIVIL JUDGE. & JMFC, HOLALKERE IN M.C.NO.43/2011

ALLOWING THE PETITION FILED U/S 13(1)(i-a)(i-b) OF HINDU MARRIAGE ACT FOR DIVORCE.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR HEARING, THIS DAY, K.S.MUDAGAL.J DELIVERED THE FOLLOWING:

-2-

NC: 2024:KHC:20585-DB
MFA No.242/2017

JUDGMENT

Challenging the judgment and decree of divorce passed against her, the respondent in M.C.No.43/2011 on the file of Senior Civil Judge & JMFC, Holalkere, has preferred this appeal.

2. The appellant was the respondent and the respondent herein was the petitioner in M.C.No.43/2011 before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.

3. The marriage of the petitioner and respondent was solemnized on 05.05.2009 at Sri.Nanjundeshwara Samudaya Bhavana, Santhebennur Village, Holalkere Taluk. The parties being Hindus are governed by the Hindu Marriage Act, 1955 ('the Act' for short).

4. The petitioner filed M.C.No.43/2011 against the respondent under Section 13(1)(ia)(ib) of the Act seeking decree of dissolution of marriage alleging that after three months of marriage, the respondent subjected him and his parents to mental cruelty. He alleged that the respondent was always speaking ill of him and insisting him to separate from his parents. He further alleged that during night time, the NC: 2024:KHC:20585-DB respondent used to get phone calls and she used to go outside and converse with the callers. Ultimately, the respondent deserted him and left the matrimonial home about two years and one month prior to the filing of the petition i.e., 19.10.2011. He alleged that since two years prior to the petition, respondent deprived him of his conjugal rights and pushed him to depression.

5. The respondent contested the petition denying the allegation of cruelty and desertion. She contended that the petitioner, his sisters and parents subjected her to physical and mental cruelty on the ground that she did not begot the child and forced her to leave the house. In that connection, panchayats were held. Being unable to withstand the ill-treatment, she filed the complaint in Chikkajajur police station, there also they were advised. She further alleged that to play fraud on her, petitioner, his sisters and parents have effected the partition in the family properties and have thrown her out. She sought dismissal of the petition.

6. In support of his case, the petitioner got himself examined as PW.1 and one Sri.S.R.Rajashekharappa @ Rajappa as PW.2 and on his behalf wedding invitation card is marked as NC: 2024:KHC:20585-DB Ex.P1. The respondent was examined as RW.1 and on her behalf RWs.2 &

3 were examined.

7. The trial Court on hearing the parties, by the impugned judgment and decree, allowed the petition and granted decree of divorce. The trial Court held that the evidence of PWs-1 and 2 that due to the conduct of the respondent, petitioner had to separate from his parents was not controverted. The trial Court further held that on the complaint of the respondent, petitioner, his parents and his sisters are facing trial in C.C.No.442/2012 for the offence punishable under Section 498A of IPC and that amounts to cruelty. The trial Court further held that the evidence of RWs.1 to 3 did not prove the allegations of cruelty set up by the respondent, thus allowed the petition.

8. Sri.D.S.Shivanand, learned Counsel appearing for Sri.M.V.Hiremath, learned Counsel on record for the respondent-wife submits that the allegations of cruelty were bald and mere filing of criminal case does not amount to cruelty. He further submits that there were sufficient grounds for the wife to leave the matrimonial home and the trial Court has failed to appreciate the evidence in proper perspective.

NC: 2024:KHC:20585-DB Thus, he seeks for reversal of the order of the trial Court and dismissal of the petition.

9. Sri N.D.Onkarappa, learned Counsel for the petitioner-husband justifying the impugned judgment and order submits that the wife has admitted about she living separately and she failed to prove that there was reasonable excuse for her to stay separately. Her allegations of cruelty were not proved. He further submits that during the pendency of this appeal, petitioner-husband has contracted second marriage, got a child out of the said marriage and if now the decree is reversed that leads to further complications. He further submits that in the year 2023, respondent-wife has initiated the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 and in that case the Court has awarded interim maintenance of Rs.5,000/- per month and the same is being paid. Thus, he seeks dismissal of the appeal.

10. Considering the submissions of both sides and examining the materials on record, the question that arises for consideration is :

"Whether the impugned judgment and decree passed by the trial Court for dissolution of marriage is sustainable in law?"

NC: 2024:KHC:20585-DB Analysis

11. There is no dispute that the parties are Hindus and are governed by the Act. It is also not disputed that they were married on 05.05.2009 and they started living separately about two years prior to filing of the petition i.e., 19.10.2011.

12. The husband claims that respondent-wife subjected him to mental cruelty and deserted him without any excuse, thereby he is entitled to decree of divorce. Whereas, the wife claims that it was the husband and his relatives, who ill-treated her mentally and physically for she not begetting the

child, which forced her to leave the matrimonial home. When the petitioner-husband has come before the Court seeking decree for dissolution of marriage under Section 13(1)(ia)(ib) of the Act, the burden is on him to establish the said grounds. Reg. Cruelty:

13. What amounts to mental cruelty and how the cruelty has to be proved was dealt with by the larger bench of the Hon'ble Supreme Court in *Samar Ghosh v. Jaya Ghosh*¹. Para (2007) 4 SCC 511 NC: 2024:KHC:20585-DB 101 of the said judgment, which is relevant for the purpose of this case, reads as follows:

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

(Emphasis supplied)

14. In the present case, the allegation of inflicting cruelty that too to the extent of causing mental depression to NC: 2024:KHC:20585-DB the petitioner, being serious in nature, he has to plead the particulars and prove the same by cogent evidence. In the petition, the particulars about when and what kind of mental depression the petitioner suffered and whether he was treated for that are not pleaded. Even the date and place of alleged ill-treatment by the respondent to the petitioner and his family members were not stated. In the cross-examination of PWs.1 and 2, the respondent denied the allegation of cruelty. The observation of the trial Court that the allegations of cruelty were not controverted in the evidence is apparent error.

15. Though the petitioner claims that himself and his parents were subjected to ill-treatment by the respondent wife, he did not choose to examine his parents or sisters. He chose to examine PW.2 who was neither neighbour nor witness to the alleged cruelty which had taken place within four walls of

the house of the petitioner. PW.2 clearly states that in between the house of himself and the petitioner, there are several other houses. The immediate neighbours would have been the best witnesses to speak to the alleged cruelty, but they were not examined. Absolutely no explanation was given by the petitioner for non examination of his parents, sisters and

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NC: 2024:KHC:20585-DB neighbours regarding alleged cruelty or the respondent abusing them or ill-treating them.

16. The petitioner contended that because of insistence of the respondent, he separated from his parents and that was the cruelty inflicted by the respondent. But the respondent claimed that to defeat all her claims, the petitioner, his parents and sisters have effected partition subsequently. The petitioner did not whisper any particulars of such partition nor produced any documents of such partition to find out what was the cause mentioned in the partition document. Contrary to that, the petitioner in the petition itself imputes disloyalty to the respondent claiming that during odd hours she used to go outside the house and indulge in conversation with some other men. In the cross-examination, he admits that she was conversing when she was between the family members. If that be so, how the respondent could talk over the phone and speak with strangers was not clarified. The trial Court also disbelieved such allegations on the ground that the petitioner neither produced any call detail records nor produced any documents to show that the respondent was possessing phone.

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17. According to the trial Court, respondent's complaint against the petitioner, his parents and sisters was cruelty. Records show that they were being tried in C.C.No.442/2012. The very fact of filing of the charge sheet and finding that to be a fit case for trial, implies that the law enforcing agency did not find the complaint frivolous. Had the Investigating Officer filed 'B' summary report, then it would have been said that the complaint was vexatious. Therefore the trial Court was not justified in observing that such prosecution of the petitioner and his relatives amounts to cruelty.

18. It was argued before this Court that in C.C.No.442/2012 the petitioner and his relatives were acquitted. First of all, nothing is produced to show such acquittal. Secondly, nothing is produced to show that such acquittal was honourable acquittal or any finding was recorded against the respondent to the effect that the complaint was vexatious to wreck vengeance against the petitioner or his relatives. The copy of the said judgment is not produced by the petitioner husband in this case. Therefore that ground also does not sustain.

19. The judgment in Samar Ghosh's case referred to supra indicates that to call the act as cruelty, it should be such

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NC: 2024:KHC:20585-DB that on consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. It was further held that mere trivial irritations, quarrels between spouses, normal wear and tear which happens in day-to-day married life may also not amount to cruelty and would not be adequate to grant decree of divorce on the ground of mental cruelty.

20. In this case, first of all the alleged ground of cruelty namely the respondent ill-treating the petitioner, his parents and sisters of the petitioner were not substantiated by acceptable evidence. Even assuming for the sake of arguments, the respondent had no compatibility with the parents-in-law or sisters-in-law, that does not amount to cruelty as contemplated under Section 13(1)(ia) of the Act and interpreted by the Hon'ble Supreme Court in Samar Ghosh's case referred to supra. Therefore finding of the trial Court on this point is unsustainable.

Reg. Desertion:

21. The petitioner contended that the respondent has deserted him without reasonable excuse for more than two

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NC: 2024:KHC:20585-DB years prior to the petition. The allegation of cruelty is already rejected. Desertion as contemplated under Section 13(1)(ib) of the Act does not mean only the couple living separately. Explanation to Section 13(1) of the Act shows that desertion should be without any reasonable cause.

22. The respondent contended that the petitioner himself subjected her and her family members to cruelty making it impossible for her to live in the said house. The petitioner himself in his petition made unfounded allegations that during night hours, the respondent was getting phone calls from some outsiders, soon after she gets call, she used to leave the house during night hours and return. Thereby he made allegations of infidelity to her. Making unfounded imputations of infidelity itself amounts to cruelty. Admittedly in the complaint of the respondent, the petitioner and his parents and sisters were tried in C.C.No.442/2012. That goes to show that there were sufficient grounds for the respondent to leave matrimonial home. If really the petitioner was interested in continuing the matrimonial relationship, on she leaving matrimonial home, he could have filed the petition for restitution of conjugal rights or issue notice seeking restitution of conjugal rights and he did not

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NC: 2024:KHC:20585-DB do so. Under the circumstances the finding of the Trial Court on the ground of desertion is unsustainable.

23. It was argued before this Court that pending this appeal, the petitioner/husband remarried and he has child out of the said marriage, therefore if decree of divorce is reversed that leads to complications. Atleast, he could have sought permission of the Court to remarry. Such conduct of the petitioner goes to show that he himself wanted to end his conjugal relationship with the respondent/wife to find new spouse. The trial Court without appreciation of the aforesaid fact granted decree of divorce which is unsustainable.

24. So far as the contention of complication due to second marriage of the petitioner pending this appeal, the petitioner has willingly invited the same. More over no material is placed to show when and whom he married and the said contention is totally baseless. Even otherwise, a flawed judgment cannot be confirmed only for the purpose of legitimizing the alleged second marriage of the petitioner/husband. Showing such leniency amounts to thwarting the cause of justice. Under the circumstances, the

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NC: 2024:KHC:20585-DB impugned judgment cannot be confirmed and the same is liable to be set aside. Hence the following:

ORDER The appeal is allowed with costs.

The impugned judgment and decree dated 24.08.2016 in M.C.No.43/2011 passed by the Senior Civil Judge and JMFC, Holalkere is hereby set aside.

M.C.No.43/2011 is hereby dismissed.

Sd/-

JUDGE Sd/-

JUDGE BSR,KSR