



Santosh/Suzan/Jose

**IN THE HIGH COURT OF BOMBAY AT GOA  
CRIMINAL WRIT PETITION NO. 112 OF 2023**

1. Shri Chetankumar Jain, s/o  
Late. Shri Vilas Jain, aged about  
42 yrs, Occ:Business, r/o Casa  
Luisa Building, Flat no.85/2/C,  
Bandh, St. Cruz, Tiswadi Goa  
403005.

2. Mrs. Ratnaprabha Jain, Major  
aged 70 yrs, Resident of Nagpur,  
Maharashtra.

Both 1 and 2  
{Through POA Chandrasheker  
Kusnoor Hno:5/H Gujrabhat  
Talaulim Tiswadi Goa}

... Petitioners

*Versus*

1. State of Goa, Through  
Police Inspector, Women's Cell,  
Panaji, Goa.

2. Public Prosecutor, High Court  
of Bombay at Goa at Porvorim,  
North Goa, Goa.

3. Smt. Akshita Chetankumar  
Jain, w/o Shri Chetankumar  
Jain, Aged about 33 yrs, r/o La  
Gomera, Mathias Ocean Park,  
Donapaula, Goa, 403001.

...Respondents

**Ms Anarkali A. Agni, Senior Advocate with Ms Afrin Harihar Khanm, Advocate for the Petitioner.**

**Mr Shailendra G. Bhobe, Public Prosecutor for Respondent No.1 and 2.**

**Ms Tejaswini Kole, Advocate with Mr Ashwin Naik, Advocate for the Respondent No3.**

**CORAM: M. S. KARNIK &  
VALMIKI MENEZES, JJ.**

**DATED: 23<sup>rd</sup> August 2024.**

**JUDGMENT: (Per Valmiki Menezes, J.)**

1. Rule. Rule made returnable forthwith and by consent of the parties, the petition is disposed of finally.

2. This Criminal Writ Petition invokes our jurisdiction under Article 226 of the Constitution of India as also our inherent powers under Section 482 of the Code of Criminal Procedure 1973. The petition seeks the quashing of a First Information Report bearing No.8/22 dated 19.09.2022 filed by the Respondent No.3 before the Women's Police Station, North Goa alleging an offence committed by the two Petitioners under Section 498-A r/w Section 34 IPC. After the petition was filed, a Charge-Sheet/Final Report came to be filed before the Magistrate bearing No.95/23/E dated June 2023 which was also challenged after the petition was amended.

3. The Petitioner No.1 is the husband of the Respondent No.3

Complainant. It is not in dispute that their marriage was solemnized according to Hindu rites on 01.05.2007 at Hyderabad after which the marriage was registered at Nagpur, Maharashtra on 26.02.2020. It is also not in dispute that a son was born to the couple, who is now around 15 years old.

Petitioner No.2 is the mother of the Petitioner No.1 aged about 66 years.

4. According to the Petitioner, immediately after the marriage, the Respondent No.3 displayed mentally unstable, impulsive, abnormal and rude behaviour prompting the Petitioner to express that he wanted to part ways with the Respondent No.3, but at the behest of his wife, the Petitioner decided to wait and watch the situation. The Petitioner alleges that due to the behaviour of the Respondent, he could not concentrate on his work, suffered losses professionally and was put through mental and physical torture, developing blood pressure ailments. It is further alleged that the Respondent No.3 would force the Petitioner No.2 to do all household work and purchase groceries despite her age and indifferent health.

It is further stated that Petitioner No.1 in the year 2021 relocated from Maharashtra to Goa, though Petitioner No.2 continued to reside at Nagpur. Along with the Petitioner No.1, their minor child and the Respondent No.3 accompanied the Petitioner to Goa and they started living together at a rented premises at Merces. It is further alleged that even after relocation, their relationship spiralled out of control and the Petitioner decided to separate from the Respondent No.3 after

communicating the same to her, the Respondent No.3 left their Merces flat and went back to Nagpur, leaving their minor child in the care of the Petitioner No.1 who continued to reside in the Merces flat in Goa till 14.09.2021. Thereafter, the Petitioner No.1 and his son shifted to an apartment at Dona Paula, Goa on 30.11.2021.

5. It is further alleged in the petition that after shifting to Dona Paula, the Respondent No.3 trespassed and forcibly entered the Dona Paula apartment which belonged to the Petitioner's company, and occupied one room therein, where she would run tuition classes. It is alleged that since the said company took serious objection to the conduct of the Respondent No.3, the Petitioner requested Respondent No.3 to vacate the said room, and as a counter to the request, the said Respondent would threaten to file a false criminal complaint against the Petitioner and his mother. It is stated that on account of these threats, the Petitioner No.1, in March, 2022 shifted to Casa Luiza Building at Santa Cruz, Goa. It was claimed in the petition that in November, 2021, the Petitioner No.1 had filed a complaint against the Respondent No.3 and had also filed a petition for divorce before the Family Court at Nagpur seeking dissolution of their marriage that despite shifting to another residence at Santa Cruz, the Respondent No.3 continued to threaten the Petitioner No.1 who then filed a police complaint against her on 25.03.2022. It is the Petitioner's case that he and his wife resided in USA for some time as also in Mumbai and that from the time the Petitioner No.1 and his wife got married till September, 2022, there were no complaints lodged by the Respondent

No.3 against the Petitioner or his mother.

6. It is further the Petitioner's case that it is only after the Petitioner filed Matrimonial Proceedings bearing No.28/2022/B on 29.03.2022 before the Civil Court at Panaji for seeking custody of his child, wherein interim protective orders were obtained that the Respondent No.3 filed a Domestic Violence Proceeding No.PWDVA 6/2022/B on 04.04.2022 and a Maintenance Proceeding No.2/2022/B on 02.08.2022. The FIR sought to be quashed by these proceedings came to be lodged on 19.09.2022 pursuant to a complaint of the same date, as a counter measure to the proceedings filed by the Petitioner No.1. It is the Petitioner's claim that the FIR and the consequent charge-sheet are an afterthought and as a means to harass and humiliate the Petitioner for wanting to divorce the Respondent No.3 and separate from her and the same are an abuse of the process of law. It is contended in the petition that there is no specific allegation made against Petitioner No.2 which brings out an offence under Section 498-A of the Indian Penal Code.

7. The Respondent No.3 has filed a counter-affidavit denying the allegations made by the Petitioner and in substance has alleged the following facts:

- a) That though the solemnization of the marriage between the Petitioner No.1 and the Respondent No.3 is admitted, the registration of their marriage at Nagpur took place without her knowledge.

- b)** The Respondent No.3 claims that she was unlawfully and forcibly separated from her son when he was barely 13 years of age on 15.06.2022.
- c)** It is alleged that the Petitioner No.1 abandoned the Respondent No.3 on multiple occasions the first such occasion being in July, 2017 when the Petitioner No.1 returned to India leaving the Respondent No.3 with her son in the USA.
- d)** Several other instances of alleged abandonment are cited in the affidavit in reply they being in early 2021 when the Petitioner relocated to Goa, and thereafter in June, 2021 when the Petitioner No.1 allegedly fled with their son and their belongings from their matrimonial residence, after which he filed the divorce petition in Nagpur.
- e)** It is further alleged in the affidavit that the transfer application was filed by the Respondent to transfer the Matrimonial Petition from Nagpur to Goa after which on 15.03.2022, the Petitioner No.1 once again abandoned the Respondent by leaving their Dona Paula apartment and took forcible custody of their child. It is only after this incident of abandonment by the Petitioner No.1 that the Respondent claims, she filed a police complaint on 28.03.2022 alleging acts of cruelty, assault, abandonment and brainwashing of their child, though the police failed to register an FIR on this complaint. A second complaint came to be filed against both

the Petitioners on 29.03.2022 though no FIR was registered pursuant thereto.

- f) The Respondent No.3 then states that on 29.03.2022, the Petitioner No.1 filed an application for custody of their child before the Civil Court at Panaji seeking interim custody therein after which the Respondent No.3, on 04.04.2022 filed a Domestic Violence Claim No.6/2022 at Panaji claiming maintenance from the Petitioner No.1 and a further Matrimonial Application for maintenance bearing No.2/2022 on 02.08.2022. Thereafter, she filed a complaint dated 19.09.2022 on the basis of which the FIR impugned in these proceedings was lodged by the Women's Police Station.
- g) The affidavit in reply which contains about 50 paragraphs contains a narration of the version put up by the Respondent No.3 of the matrimonial dispute and various incidents alleged therein between the period spanning from around June, 2021 to 02.08.2022. From the affidavit, it is clear that the Petitioner No.1 and the Respondent No.3 are living apart since about November, 2021.

## **SUBMISSIONS**

8. On behalf of the Petitioners, Ms Anarkali Agni, Senior Advocate submitted that the lodging of the FIR is with the sole purpose of pressurizing the Petitioners to settle the matrimonial, custody and

maintenance demands of the Respondent No.3 and is therefore an abuse of the process of law. It is submitted that the plain reading of the FIR would not disclose any offence made out in terms of the ingredients of Section 498-A of the Indian Penal Code. It was submitted that for the purpose of making out a case for proceeding with the investigation of an offence under Section 498-A, the complaint ought to have made allegations of acts that constitute “cruelty” as defined in the explanation to that section; no specific allegation can be found on the face of the complaint that by the wilful conduct of either of the Petitioners, if the Respondent No.3 was likely to be driven to commit suicide or cause grave injury or danger to her life, whether mental or physical. It was further submitted that though there are allegations of harassment in the complaint, specific dates or instances of such harassment are missing in the complaint, and the complaint is devoid of any specific acts which could constitute an offence under Section 498-A of the IPC.

The following judgments have been cited in support of the arguments advanced by the Petitioners:

- a) ***Kahkashan Kausar and Ors. Vs. State of Bihar and Ors.*** [(2022) 1 S.C.R. 558];
- b) ***Achin Gupta v. State of Haryana and Ors.*** [2024 SCC OnLine SC 759];
- c) ***Abhishek v. State of Madhya Pradesh*** [2023 SCC OnLine SC 1083];
- d) ***Preeti Gupta and Anr. v. State of Jharkhand and Anr.*** [(2010) 7 SCC 667];

- e) **Pramjeet Batra v. State of Uttarakhand and Ors** [(2013) 11 SCC 673];
- f) **Prof. R. K. Vijayasarathy and Anr. v. Sudha Seetharam and Anr.** [(2019) 16 SCC 739].

9. On behalf of the Respondent No.3, learned Advocate Ms Tejaswini Kole, at the outset, raised a preliminary objection to the maintainability of the Petition, submitting that the same has not been filed by the accused persons themselves but have been filed through their attorney, constituted through a Power of Attorney, which is impermissible at law; learned Counsel relies upon the following judgments in support of her submission:

- a) **Samantha Christina Delfina Wills v. State of Karnataka [High Court of Karnataka, W.P. No. 24602 of 2021, decided on 01.06.2022]**
- b) **Amit Ahuja v. Gian Prakash Bhambri** [2010 SCC OnLine P&H 4856]
- c) **Sukhwinder Singh through his SPA and Ors. V. State of Punjab and Ors. [High Court of Punjab and Haryana, CRM-M-7189-2023, decided on 18.10.2023]**
- d) **Pravin Niwratti Sawant v. Nisha Pravin Sawant** [2007 SCC OnLine Bom 392]

It was further submitted by the learned Advocate for the Respondent No.3 that the FIR discloses various acts committed by the Petitioners, with material particulars, constituting acts of “cruelty”, clearly making out an offence under Section 498-A of IPC. She further submitted that the definition of “cruelty” in this provision is expansive

and envisages mental torture or a certain mental state that may be created in the complainant, by acts of the Petitioners, which would be enough to bring home the offence under Section 498-A; she submitted that the allegations and material, both in the FIR and in the chargesheet would be enough to make out a case of a wilful conduct of the Petitioners of a nature that would be likely to drive the Respondent No.3 to commit suicide or cause grave injury or danger to her life. She cites the following judgments in support of this submission:

- a) ***Pramod R. S. v. State of Karnataka and Ors.*** [2023 SCC OnLine Kar 26]
- b) ***Chintan Gupta and Ors. v. The State of Madhya Pradesh and Anr.*** [High Court of Madhya Pradesh (Indore Bench), Misc. Criminal Case No. 25300 of 2019, decided on 16.12.2022]
- c) ***Undavali Narayana Rao v. State of A.P.*** [(2009) 14 SCC 588]
- d) ***Prabin Gopal v. Meghna*** [2021 SCC OnLine Ker 2193]
- e) ***Sandhya Malik v. Col. Satendra Malik*** [2023 SCC OnLine Del 6099].

**CONSIDERATIONS ON PRELIMINARY OBJECTIONS:**

10. We would first proceed to deal with the submissions of the learned Counsel for the Respondent No.3 and the preliminary objections raised as to the maintainability of the Petition filed by the accused persons through their duly constituted attorney. We note that the submission made by the learned Counsel for Respondent No.3 is not that the Power of Attorney through which the agent has been

constituted does not contain specific powers to file the petition, but is an objection of omnibus nature, to the effect that no Petition filed under Article 226 of the Constitution of India or invoking inherent powers under Section 482 IPC is maintainable at the behest of an attorney appointed through an instrument such as a Power of Attorney. Heavy reliance has been placed on *Samantha Christina Delfina Wills* (supra) passed by Single Judge of the Karnataka High Court, and *Sukhwinder Singh* (supra) passed by Single Judge of the High Court of Punjab & Haryana.

11. *Samantha Cristina* (supra) cited by the Respondent No.3 was a case where the Petition filed by the accused under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code was lodged by the Attorney of the accused; in that case the Power of Attorney appended to the petition stated that it was executed at Bangalore, but the Power of Attorney further stated that the executors had signed the Power of Attorney before the Notary at London. Further, there was no averment made in the entire petition that the Power of Attorney holder was aware of the facts of the case and had full knowledge of what was being filed. The judgment in *Samantha Christina* (supra) was therefore rendered in the specific facts of that case, and in our opinion is not a judgment laying down an absolute proposition that, whatever may be the circumstances in which a petition under Article 226 read with Section 482 CrPC is filed, such a petition would never be maintainable at the behest of an Attorney in whose favour the accused/applicants have executed the Power of

Attorney.

**12.** In *Amit Ahuja v/s Gian Prakash Bhambri* (2010 3 RCR (Cri) 586, a Single Judge of the Punjab & Haryana High Court took a view that a petition filed under Section 482 CrPC, by Power of Attorney holder of the aggrieved party in a criminal proceedings was not maintainable; a conflicting view was taken by another Single Judge of the Punjab & Haryana High Court in *Kuldeep Singh Jaswal v/s. Jaspal Singh* (2016) 2 AICLR 703 which held that no straightjacket formula could be laid down with regard to the manner in which such a petition could be filed through an Attorney, as the maintainability of such a petition should be left open to the discretion of the Court hearing the petition to decide upon the facts and circumstances of that case. A reference was made to the larger Bench of the Punjab & Haryana High Court in *Mangal Dass Gautam & Anr v/s. State of Haryana & Anr.* [(2018) SCC OnLine P &H 8136] as to whether a petition seeking quashing of a criminal proceedings can be filed by an accused through an Attorney, if so, under what circumstances.

**13.** Answering the reference, the Division Bench of the Punjab & Haryana High Court was of the view that the view taken in *Amit Ahuja* (supra) cannot be said to be correct and further held that criminal proceedings under Section 482 CrPC can be filed by an accused through an Attorney, but the circumstances under which it can be so filed, and would be maintainable, would depend upon various factors including facts and circumstances of that particular case, which is

better left to the wisdom and discretion of the Court. Thus, *Amit Ahuja* (supra) cited by the learned Advocate for Respondent No.3 has been held as an incorrect view and no reliance could be placed upon this view, before us.

14. It is worth noting that the view taken in *Mangal Dass Gautam* (supra) was also based on the principle that the High Court, in its inherent jurisdiction under Section 482 CrPC is always vested with the power to secure the ends of justice and to prevent the abuse of the process of a High Court. The judgment proceeds on the principle that keeping in view, the content, purpose and nature of the provisions of Section 482, it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction; the judgment further proceeds on the premise that the powers of the High Court under this Section are extraordinary in their nature and exercised *ex debito justitiae*, for the purpose of doing real and substantial justice, for the administration of which the Courts of Law exist.

15. In *R.P. Kapoor v/s. State of Punjab* (1960 CriLJ 239) the Supreme Court laid down the scope of the inherent powers of the High Court for the purpose of quashing a criminal proceeding in the following words:

*"Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent*

*jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may not support the accusation in question.”*

16. Referring to *R.P. Kapoor* (supra), the Supreme Court in *Madhu Limaye v/s. State of Maharashtra* (AIR 1978 SC 47), whilst considering the scope and ambit of the inherent powers vested in the High Court under Section 482, has stated thus:

*“The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”*

17. In our opinion, the view taken by the learned Single Judge of the Karnataka High Court in *Samantha Delfina* (supra) is a very narrow view considering the plenary powers vested in this Court under Article 226 of the Constitution of India, as also inherent powers under Section 482 CrPC to secure the ends of justice or to thwart an abuse of the process of Court; we are in respectful disagreement with the view taken in *Samantha Delfina* (supra), and in our considered view, we would prefer not to follow a straightjacket formula or follow a narrow rule of maintainability of a petition under Article 226 of the Constitution of India or under Section 482 CrPC as laid down in that judgment. According to us, the maintainability of such a Petition at the

behest of a holder of Power of Attorney of the accused/agrieved party, would be decided from case to case, after examining the specific facts of each case.

**18.** In the present case it is not in dispute that both petitioners are originally resident of Nagpur and Petitioner No.1 and the Respondent No.3 came to Goa only around the beginning of 2021. Petitioner No.2 who is the mother of the Petitioner No.1 continues to reside in Nagpur.

The first proceeding between the parties was filed by the Petitioner No.1 at Nagpur on 16.12.2021, being a matrimonial petition for divorce in which the Respondent No.3 filed her written statement on 07.09.2022, after being served with the petition on 21.06.2022. The Respondent No.3 in the meantime filed a transfer petition bearing No.2204/2022 before this Court and obtained an order on 09.06.2023 transferring the matrimonial proceedings before the Nagpur Family Court to the Court in Goa. Respondent No.3 has also filed two complaints before the police, one on 28.03.2022 and the other on 29.03.2022 based upon which a Domestic Incident Report was filed before the Magistrate and a Domestic Violence Case bearing No.PWDVA/6/2022/B was registered. The Petitioner No.1 filed on 29.03.2022 a matrimonial petition No.28/2022/B seeking custody of their minor child in which the Respondent No.3 has filed a reply on 23.06.2022 opposing the custody being granted to the Petitioner.

**19.** All these facts are not in dispute as they are a matter of record and do not require to be supported by affidavit or any pleading of the Petitioners on their own. The verification clause in the petition as

sworn by the Attorney states that the facts stated in the petition are true to his own knowledge and based on records. The affidavit in support also states that the Attorney affiant is fully conversant with the facts and circumstances of the case and the Petition has been drafted by the Counsel on his own instructions and to his own knowledge.

The pleadings in all these proceedings and orders passed by various Courts in matters of custody of the child, interim arrangements in Domestic Violence cases and the status of the divorce proceedings in the matrimonial petition are part of the record and not in dispute between the contesting parties. This petition can therefore, be decided based upon these records and is not required to be decided based on any special fact to be pleaded by the Petitioners which may require consideration. In that view of the matter, the Petition is clearly maintainable, not only for the fact that the material, pleadings and facts are supported by the records of various Courts, but also for the fact that the attorney has specifically pleaded that the facts stated therein are true to his own knowledge and from the record; the attorney has also filed an additional affidavit on 29.02.2024 after mediation proceedings ordered by this Court, between the parties failed; this affidavit details the assets of the petitioners and the offer to deposit in this Court certain sums of money to provide funds to the respondent No.3 and to cover their child's educational expenses.

For all the forgoing reasons, we reject the preliminary objection raised by Respondent No.3 as to the maintainability of this Petition.

## **CONSIDERATIONS OF SUBMISSIONS ON MERITS:**

**20.** The FIR and the charge-sheet in this case allege the commission of an offence under Section 498-A of the Indian Penal Code. Thus, what is required is to examine whether the allegations made in the complaint make out the ingredients of an offence under Section 498-A, which reads as under :

*“Section 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.”*

**21.** The provision creates an offence punishable with an imprisonment for a term which may extend of three years where a husband or the relative of the husband of the victim subjects to cruelty. The Explanation to Section 498-A specifies that the act committed by said person will be an act of ‘cruelty’ in two situations, the first is where the wilful conduct of the accused is of a nature likely to drive the woman to commit suicide or cause danger to her life or grave injury to

her, mentally or physically; the second instance as found in the Explanation is where such harassment by the accused is with a view to coerce the victim to meet an unlawful demand for property or valuable security.

22. The accusations in the FIR and charge-sheet are not those contained in Explanation (b) to Section 498-A IPC. It is the case of Respondent No.3 that the accusations made by her constitute cruelty of the nature as found in Explanation (a) to Section 498-A. It is in this background that we will have to examine whether the allegations made in the FIR and charge-sheet, if taken at their face value, and the material supporting such allegations, makes out an offence under Section 498-A IPC, and in particular, is an act of ‘cruelty’ as described in Explanation (a) thereto.

23. The Hon’ble Supreme Court observed the approach the Courts should have whilst exercising its inherent powers in matters of quashing complaints alleging offences under Section 498-A has laid down certain broad parameters for consideration;

**In Preeti Gupta v. State of Jharkhand [2010 CrLJ 4303 (1)]**

*“30. It is a matter of common experience that most of these complaints under Section 498A 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 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 498A 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.

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. ”*

24. In *Girdhar Shankar Tawade v. State of Maharashtra* [(2002) 5 SCC 177 : 2002 SCC (Cri) 971], examining the scope of the Explanation, the Supreme Court has held as follows:

*“3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A. ”*

25. In *Gananath Pattnaik v. State of Orissa* (2002) 2 SCC 619, the Supreme Court held that the concept of cruelty under Section 498-A

IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.

26. In *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335], the Supreme Court has examined the scope of exercise of power under Section 482 of the Cr.P.C. and the categories of cases where the High Court may exercise its power under it relating to cognizable offences. It has enumerated these categories in the following terms:

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

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers*

*Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

27. In ***Achin Gupta vs. State of Haryana and ors.*** (2024) SCC OnLine SC 759, the Supreme Court has considered the facts that may be considered in relation to the litigations and proceedings filed by the parties prior to the filing of the complaint and whether any explanation has been offered in the complaint or otherwise as to the delay in filing the same; the relevant parts of the judgment are quoted below:

*“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.*

...

*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.*

...

....

*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....*

*32. .... 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 issued 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... ”*

28. Thus, in terms of the law laid down in *Achin Gupta* (supra), in cases where the allegation is of an offence under Section 498-A IPC, the guidelines specified in category (7) referred to in *Bhajan Lal*'s case are to be applied liberally whilst considering the facts and attending circumstances before considering quashing of an FIR.

29. In the background of the case law discussed above, we proceed to examine the complaint/FIR and the contents of the chargesheet to ascertain whether the ingredients of an offence under Section 498-A IPC are made out, and more particularly, keeping Explanation (a) in the forefront.

The complaint alleges that the petitioner No.1 is in the habit of constantly abandoning the respondent without any means; it states that after two months of marriage the petitioner abandoned the respondent and moved to the U.S.A, in July 2007 after which she was forced to live on the pension of the petitioner No.2. (page 232 of the paper-book) The next allegation pertains to the period July 2017 where it is alleged that the petitioner abandoned the respondent No.3 in U.S.A. forcing the respondent No.3 to return to India four months later. (Page 234 of the paper-book). Neither of these allegations can be said to constitute an act of cruelty in terms of Explanation (a) to Section 498-A. There are more particulars given detailing the dates on specific instances of abandonment or even the place and location when such acts allegedly took place.

30. Then there are three incidents referred to in the complaint at page 238, 227 of the paper-book, the first of which alleges that the petitioner No.2 was poisoning the mind of the child, which alleged act provoked the child to start hitting his mother respondent No.3; the second act alleges mental, emotional abuse, harassment and cruelty when the respondent had barely recovered from Covid, and the third alleges poisoning of their child's mind for years, by the petitioners. These allegations are devoid of any particulars as to the date or even year in which they took place or the location of the happening of such event.

The complaint further alleges at page 235 that the complainant was diagnosed on 17.09.2021 with low blood pressure when she had a fall and that in November 2021, whilst living with the petitioner No.1 at their residence at Dona Paula, she was being fed a mysterious powder for 11 days by their servant Badal at the behest of petitioner No.2 and one Kshitij Ingle. On the face of these allegations, there can be no act of cruelty, on a mere suspicion attributed to either of the petitioners. The further allegation is found at page 231 of the paper book where the complainant alleges that the petitioner went in hiding with their son after having left their house at Dona Paula with the petitioner No.2. Whilst this allegation is just a statement of fact which does not constitute cruelty, we have noted that the record discloses that the petitioner No.1 by that time had filed a divorce petition at the Family Court at Nagpur on 16.12.2021 which was followed by the respondent No.3 herself filing a transfer petition before this Court on

27.12.2021 which was ultimately granted on 09.06.2023. The matrimonial petition was ordered to be transferred from the Family Court at Nagpur.

31. At page 236 of the paper book, the complainant further alleges that she was meted “physical and mental cruelty” at Dona Paula when the petitioner yelled and shouted at her and pushed her aside at a supermarket “Kamat”; this incident is alleged to have taken place in December 2021. It is then alleged at page 237 of the paper-book that on 15.03.2022 the petitioner No.1 fled leaving her with barely Rs.3000/- and no lodging. This allegation is made as juxtapose with the fact that the complainant has already filed a transfer petition before this Court on 27.12.2021, with full knowledge of the allegations made in the divorce petition of the petitioner No.1.

It is further alleged at page 232 of the paper-book by the complainant that “*on 15.06.2022, on the day we were supposed to return back to Nagpur literally ran away without telling me, with my son and their luggage in the car. He has mentally harassed me and is financially abusing me no end.*” This statement in the complaint is made notwithstanding the fact that this Court had ordered transfer of the matrimonial petition of the petitioner No.1 before the Family Court Nagpur to the Civil Judge Senior Division “B” Court at Panaji Goa.

32. At this juncture, we take note of the fact that as on this date, (15.06.2022), apart from the pendency of the matrimonial petition for divorce, there was a petition filed by the Petitioner No.1 on 29.03.2022,

for custody of their child pending before the Civil Judge, Senior Division at Panaji. In this petition bearing No.28/2022/B, the Petitioner No.1 had sought an interim relief in the nature of interim custody of their child alleging therein, multiple instances of child abuse by the Respondent No.3, including allegations of having mercilessly beaten the child on several occasions. On 04.04.2022, an application was made by the Petitioner No.1 before the Civil Court seeking to restrain the Respondent No.3 from taking away custody of the child from him, on which the parties filed a joint statement, signed by their Advocates that the Respondent No.3 mother could not take forcible custody of the minor child or access the Petitioner No.1 at his residence or office till filing of the reply. A written statement opposing custody in favour of the Petitioner No.1, came to be filed by the Respondent No.3 on 23.06.2022; the interim order granting custody to the Petitioner No.1 was extended on 02.11.2022 after Respondent No.3 gave her no objection to the same. This order was extended by further orders of the Civil Court dated 23.11.2022. The present FIR was filed a little over a month prior to this order, i.e. on 19.09.2022.

33. The complaint then alleges that after the Petitioner left with their child on 15.06.2022, the Complainant waited for two months at their house, asking everyone for the whereabouts of the Petitioner but their whereabouts were never disclosed. It is further alleged that the Respondent No.3 tried to search for the Petitioner at an address in Sangolda but the address which had been given by the Petitioner was non-existent. Then the Respondent No.3 alleges that she proceeded to

Indore since she had information that the Petitioner No.1 was living there with her child after abandoning the Respondent. When we examine these allegations as opposed to the pleadings of the Respondent No.3 in the custody application, though the Respondent No.3 has participated in these proceedings, there are no such allegations made by her therein, and instead, the Respondent has agreed before the Civil Court to refrain from interfering with the custody of their child, which was with the Petitioner at least till 23.11.2022 (last order passed by the Civil Court) [page 618 of the paper book].

34. The statements as made by the complainant in the FIR, specifically referred to by us above, would also have to be read in the light of the facts on record of two other proceedings, which were filed and were running parallel, on the same timeline as the allegations made in the FIR. The Respondent No.3 filed a complaint dated 28.03.2022 (page 182 of the paper book) to the Station House Officer of the Women's Police Station alleging that the Petitioner No.1 abandoned her on 15.03.2022 and disappeared from their house with their son. In that complaint, the Petitioner requested the State of Goa to grant her protection from domestic abuse through a Protection Officer, in addition to which she sought orders to direct the Petitioner to provide her with housing, monthly expenses, to ensure the safety of her minor son and for her personal protection from any physical harm or abuse by the Petitioner, through the issuance of restraint orders. A request was also made to file an FIR for offences under Section 498A IPC.

A second complaint was addressed to the same Police Station on 29.03.2022 making similar allegations to the ones in the present complaint. On these complaints, the Protection Officer under the Protection of Women from Domestic Violence Act (DV Act), on 01.04.2022 prepared the Domestic Incident Report in terms of Section 9 of the DV Act, recording therein the affidavit of the Respondent No.3 and submitted the same to the concerned Magistrate. This proceeding was numbered PWDVA/6/2022/B before the Magistrate. The main reliefs sought in these proceedings were a restraint order against the Petitioner from physically or mentally abusing the Respondent No.3, or from contacting or communicating with her; a restraint order from disposing off the assets or from leaving India or from dispossessing the Respondent No.3 from the premises at 503, Ocean Mathias Park, Dona Paula and to provide an alternate accommodation to the Respondent to the extent of rent value of Rs.50,000/- per month. In addition, the Respondent sought an order of maintenance and return of the custody of their minor child, even though, by then, a custody application had been filed by the Petitioner.

The Petitioner No.1 filed his written statement in the DV case on 29.04.2022 denying the allegations made by the Respondent No.3, and making counter allegations therein that the Respondent No.3 was indulging in abusive behaviour towards their minor child, and further that he had filed a Police complaint against Respondent No.3 on 25.03.2022 stating therein these allegations.

Thus, very clearly it is established that the parties were participating in at least two proceedings before the Civil Court (custody petition) and before the JMFC (DV case), in which even joint applications had been filed. The allegation in the complaint/FIR that the Respondent No.3 had been abandoned and was searching for the Petitioner and their child at Sangolda, and then travelled to Indore, appear to be quite untrue, as the Respondent No.3 herself jointly agreed to continue the custody of their child, on 04.04.2022 before the Civil Court, wherein she was granted visitation, subject to the child's wishes.

35. A reading of the remaining allegations made in the complaint are vague and totally devoid of any material particulars. There are allegations that their child learnt to lie under influence of the Petitioner No.2 (mother in law), who allegedly poisoned the child's mind to the extent that he started hitting the Respondent No.3. Further allegations are to the effect that the Petitioner No.1 is shrewd, manipulative, and has indulged in deliberately neglecting the Respondent No.3 and has abandoned her without a single rupee for her survival. These allegations are clearly vague and are set out without any details as to the date or place of these incidents. None of the allegations made in the complaint if taken at their face value would disclose a case of cruelty of the nature specified in Explanation (a) to Section 498A IPC. Several of these allegations are found repeated in prior proceedings such as the domestic violence case and the written statement to the custody application, and are therefore, clearly an afterthought and a

ruse to maintaining a criminal complaint to perhaps pressurize the Petitioner No.1 into agreeing to the Respondent's terms.

36. In *Pinakin Mahipatray Rawal vs. State of Gujarat* (2013) 10 SCC 48 the Supreme Court held :

*"23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide."*

Even if we view the allegations to be of the nature that caused the complainant a certain degree of stress and mental disturbance, as held in *Pinakin* (supra), not every case of an incident that may cause suffering or mental torture to the complainant can be considered of the intensity and degree required to be a case of cruelty as explained in Explanation (a) to Section 498A IPC. We are convinced that the allegations made in the complaint do not disclose such facts which would constitute a case of cruelty of the intensity required to cause the complainant to want to commit suicide or cause harm to her life or limb.

We have perused the three statements of witnesses Laxmi Haddimani, Sita and Naresh Buddhiram, the first two who worked as maids with the Complainant and the third who worked as a security guard at the complex wherein the complainant resided, and all three statements record that the witnesses had no knowledge of the personal life of the complainant nor were aware of any abuse or assault on the complainant by her husband. Besides these three statements, there is no other material on record barring transcripts of WhatsApp or Email messages and some photographs which, also do not disclose any particular incident which fits the description of an offence as alleged.

We are therefore of the considered opinion that in terms of the pronouncements of the Supreme Court in the case law cited above, the allegations made in the complaint do not partake of an offence under Section 498A against either of the Petitioners.

37. As held in *Achin Gupta* (supra), we would be obliged to also examine the contents of the FIR, to ascertain whether the same has been filed with an intention to wreak vengeance on the Petitioners for the pending proceedings before the parties and whether the filing of the complaint is a pure abuse of the criminal process, to achieve this end. The various proceedings between the parties are detailed in the table below:

Date	Proceeding/Event
26.02.2020	The marriage of the parties which was solemnized on 01.05.2007 was registered.

June 2021	The Petitioner No.1 and the Respondent No.3 first separated.
05.11.2021	Notice was issued by the Petitioner to the Respondent calling upon her to come forward to file a divorce by mutual consent. The notice was received by the Respondent.
16.12.2021	Matrimonial petition for divorce filed at Nagpur by the Petitioner on grounds of cruelty alleged against Respondent No.3.
27.12.2021	Transfer petition filed before this Court seeking to transfer the divorce proceedings from Nagpur to Goa.
15.03.2022	Complainant alleges in the complaint that the Petitioner abandoned her and absconded with the child.
25.03.2022	Police complaint filed by the Petitioner alleging acts of abuse by Respondent No.3 against the Petitioner and their child.
28.03.2022, 29.03.2022	Respondent No.3 files two DV complaints before the Protection Officer.
29.03.2022	MP 28/2022/B was filed before the Civil Judge, Senior Division, Panaji by the Petitioner seeking custody of their child.
30.03.2022/ 01.04.2022	Protection Officer files Domestic Incident Report before JMFC, Panaji registered as PWDVA/6/2022/B.
04.04.2022	On an application filed by Petitioner in the custody application, to restrain Respondent No.3 from taking forcible custody of the child, consent/joint statement filed by the parties that custody would continue with the Petitioner with visitation rights to the Respondent No.3 until she files her reply.
06.04.2022	Written statement/reply filed by the Petitioner in the DV case.

23.06.2022	Written statement filed by Respondent No.3 in the custody application.
27.06.2022	Respondent No.3 appeared before the Matrimonial Court in Nagpur seeking time to file her written statement.
02.08.2022	Respondent No.3 files an application No. NPA/2/2022/B before JMFC, Panaji seeking maintenance under Section 125 Cr.P.C.
07.09.2022	Written statement tendered by the Respondent No.3 before Family Court, Nagpur.
<b>19.09.2022</b>	<b>Complaint/FIR filed by the Respondent No.3 before Women's Cell, Panaji Police Station alleging offences under Section 498A IPC.</b>
17.11.2022	Written statement of Respondent No.3 taken on record before the Nagpur Court.
09.06.2023	Transfer order passed by High Court of Bombay at Goa transferring Matrimonial Petition from Nagpur to Civil Judge, Senior Division (B-Court) at Panaji, Goa to enable all proceedings by the parties to be heard by one Court.
20.06.2023	Charge sheet filed.
17.08.2023	Present petition filed.

38. From the reading of the sequence of events which culminated in the filing of the complaint, it is striking that the Respondent No.3 has referred to incidents as far back as the year 2009 and thereafter two incidents which specifically pertain to the period from the filing of the Matrimonial Petition at Nagpur to the interim decision in the custody application and the filing of the written statement in the DV case; despite this she has chosen not to file any FIR throughout this period

until 19.09.2022, immediately after having filed a written statement in the divorce proceedings. There is no explanation offered in the complaint or in any of the statements of the Petitioner recorded before the Police as to why she chose to remain silent throughout this period, more so when all the aforementioned proceedings were in full progress during the period to which the allegations pertain. This itself would be a clear indicator of the fact that the filing of the FIR is an afterthought and the same is done with an intention to wreak vengeance against the Petitioners and to settle scores with them, or perhaps to pressurize them into settling the pending proceedings. This would clearly be a case of abuse of the criminal process covered by Category 7 of *Bhajan Lal* (supra).

39. For the above reasons, we quash FIR No.8/22 dated 19.09.2022 registered at the Women's Police Station, North Goa, along with Final Report/Charge Sheet dated 21<sup>st</sup> June 2023, bearing No.95/23/E filed against the Petitioners for the offences under Section 498-A, read with Section 34 IPC.

**VALMIKI MENEZES, J.**

**M.S. KARNIK, J.**