

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 come 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 of 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 wanted 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 and 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 quiet 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 complaint 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