IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5657 OF 2022

**BETWEEN:**

NIRANJAN HEGDE

... PETITIONER

(BY SRI ARUN GOVINDRAJ, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA
   BENGALURU
   SANJAYANAGAR POLICE STATION
   REPRESENTED BY HCGP
   HIGH COURT OF KARNATAKA
   BENGALURU - 560 001

2. S R VIJAYKUMAR

... RESPONDENTS

(BY SRI K S ABHIJITH, HCGP FOR R-1,
SRI M R C MANOHAR, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE PROCEEDINGS IN CR.NO.139/2022 (ANNEXURE-A AND B) REGISTERED BY THE 1ST RESPONDENT AGAINST THE PETITIONER UNDER SECTIONS 304B, 313 AND 498A OF IPC, PENDING ON THE FILE OF THE VIII A.C.M.M., BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner calls in question registration of a crime in Crime No.139 of 2022 for offences punishable under Sections 304B, 313 and 498A of the IPC.

2. Though the matter is listed in orders, with the consent of parties. it is taken up for final hearing.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The petitioner is the husband of one S.V.Raksha, who dies committing suicide. The complainant/2nd respondent is her father and father-in-law of the petitioner. Marriage between the

petitioner and S.V.Raksha takes place on 11-12-2017 at Chikmagalur. The same came to be registered on a later date. It is the case of the petitioner that relationship between the wife and the husband did not go well immediately after marriage and they had serious compatibility issues between them. When incompatibility became inevitable, the daughter of the complainant appears to have left the matrimonial home and began to reside with her parents at Bangalore. All efforts of reconciliation which were on for over two years are said to have failed. On the score of irreconcilable incompatibility both the petitioner and the daughter of the complainant filed an application for divorce under Section 13B of the Hindu Marriage Act, by mutual consent, in M.C.No.2415 of 2022. An application is also filed for waiver of 6 months period for separation by mutual consent. During the pendency of the said petition before the Family Court, it transpires, on the morning of 13-06-2022 when the petitioner was at Mysore, he received a call from his mother-in-law that their daughter had committed suicide by hanging herself in the bed room of the parental house and a

report of suicide was made before the jurisdictional police. On the said incident, a complaint came to be registered by the complainant which becomes a crime in Crime No.139 of 2022 for offences punishable under Sections 304B, 313 and 498A of the IPC. It is this registration of crime that drives the petitioner/husband to this Court.

4. Heard Sri Arun Govindaraj, learned counsel appearing for the petitioner, Sri K.S.Abhijith, learned High Court Government Pleader appearing for respondent No.1 and Sri M.R.C.Manohar, learned counsel appearing for respondent No.2.

5. The learned counsel Sri Arun Govindaraj, appearing for the petitioner would contend with vehemence, that a strained relationship between the husband and the wife for over two years has led the daughter of the complainant to leave the matrimonial house and reside in her parents' house. The family of the complainant also has a problem amongst themselves, as there were several communications between the deceased and brother of the deceased with regard to the behavior of the

deceased towards the family of the petitioner or petitioner himself. He would submit that ingredients of Section 304B of the IPC are not satisfied even to the remotest sense, as the ingredients should be of such harassment for demand of dowry that would lead to the death of the deceased/wife. That not being in place, he would seek quashment of entire proceedings and would place reliance upon the judgment of the Apex Court in the case of ***SURESH KUMAR SINGH v. STATE OF UTTAR PRADESH – (2009) 17 SCC 243***.

6. On the other hand, the learned counsel appearing for the 2nd respondent/complainant Sri M.R.C.Manohar, would vehemently refute the submissions to contend that the death has occurred only 15 days ago and the case is registered on 13.06.2022. The investigation is still on. At this stage, what is to be looked into is only whether *prima facie* the complaint satisfies the ingredients of Section 304B of the IPC. He would further submit that there are other offences alleged under Sections 313 and 498A of the IPC which are all cognizable. He

would place reliance upon the judgment of the Apex Court in the cases of ***DINESHBHAI CHANDUBHAI PATEL v. STATE OF GUJARAT AND OTHERS – (2018) 3 SCC 104***, ***KAPTAN SINGH v. STATE OF UTTAR PRADESH AND OTHERS – (2021) 9 SCC 35*** and ***NEEHARIKA INFRASTRUCTURE PRIVATE LIMIED v. STATE OF MAHARASHTRA AND OTHERS – 2021 SCC OnLine SC 315***. On the strength of the submissions and the judgments relied on, the learned counsel seeks dismissal of the criminal petition.

7. The learned High Court Government Pleader would toe the lines of the learned counsel appearing for the 2nd respondent to contend that investigation material and Section 164 Cr.P.C. statement would lead to the crime against the petitioner and, therefore it is a matter of trial for the petitioner to come out clean.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused available material on record.

9. The marriage between the petitioner and the daughter of the complainant who is now dead is not in dispute. The contention of strained relationship between the petitioner and the deceased is also borne out from the records. The complaint itself narrates that the deceased had left the matrimonial house and was residing at her parental house. *Whether this can be enough circumstance to drive home any of the allegations under Sections 304B, 498A or Section 313 of the IPC is what falls for consideration at this juncture in the case at hand?* The daughter of the complainant commits suicide on 12-06-2022. The complainant on 13-06-2022 registers the complaint / report of death before Sanjay Nagar Police Station, Bangalore. The report so registered on that date is germane to be noticed and it reads as follows:-

> *"It is to report that my daughter S.V.Raksha has committed suicide by hanging in my house. She was married to a planter Mr.Niranjan Hegde of Thannodi, Chikkamaglur Dist. in the year 2017 Dec. She was not finding her life comfortable with him eversince she got married. His parents and we too have had workedout to make the life of the couple happy but was still unresolved. My daughter Raksha was working for Infosys. She use to be in pains all through. Her in-laws also*

*had tried to make the couple happy they too have not succeeded.*

*Raksha was working from home living in her room was seen not in mood last evening.*

*Today 13th Jun 2022 around 9.30 a.m. our made Nirmala had gone to her room to call for her tea and found Rakshas body was hanging from ceiling of her bed room in the I floor. As she started crying we asked her what happened she showed us the hanging body of the Raksha. I saw the dead body with my wife Dr.Ambujakshi and it was a shock and unexpected death. Raksha was unhappy in her life although had studied B.E., M.Tech and MBA. Her married life misery could have driven her to take the ultimate step to end her life. I have tried to inform her in-laws but the calls were not reachable, however, informed her husband Mr .Niranjan Hegde about his wifes suicide. She might have committed her suicide last night i.e.12th Jun 22 after 09=00 pm.*

*Please take necessary legal action deem necessary."*

The narration in the complaint by the father of the complainant herein is that though she married in the year 2017; she was not finding her life comfortable ever since she got married; has serious problems with her husband and narrates that she had died by hanging herself from the ceiling of her bedroom in the parental house. This was the initial report that was made to the police by the father of the deceased. On the next day, a detailed complaint is registered on getting to know several facts. The

further complaint is registered on 14-06-2022, which is in detail and reads as follows:

14-6-2022

*ಇಂದ*

*ಎಸ್.ಆರ್.ವಿಜಯಕುಮಾರ*
*ನಂ.283, 4ನೇ ಕ್ರಾಸ್, ವಯಸ್ಸು 69*
*ಕೆ.ಇ.ಬಿ.ಕಾಲೋನಿ*
*ಸಂಜಯನಗರ, ಬೆಂ–94.*
*ಮೊ.9565050l0, ಕಾಸ್ಟ್ ವಕ್ಕಲಿಗ*

*ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಠಾಣಾಧಿಕಾರಿರವರಿಗೆ*
*ಸಂಜಯನಗರ ಪೊಲೀಸ್ ಠಾಣೆ*
*ಬೆಂಗಳೂರು ನಗರ.*

*ಮಾನ್ಯರೇ,*

*ವಿಷಯ: ನನ್ನ ಮಗಳಾದ ಶ್ರೀಮತಿ ಎಸ್.ವಿ.ರಕ್ಷಾರವರ ಆತ್ಮಹತ್ಯೆಯ ಬಗ್ಗೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಕೋರಿ ದೂರು.*

*ನಿನ್ನೆ ದಿನಾಂಕ 13–06–2022 ರಂದು ನನ್ನ ಮಗಳಾದ ಶ್ರೀಮತಿ ಎಸ್.ವಿ.ರಕ್ಷಾ ಕೋಂ ನಿರಂಜನ್ ಹೆಗ್ಡೆ ಕನೂಡಿ ಗ್ರಾಮ ಮೂಡಿಗೆರೆ ತಾ॥ ಚಿಕ್ಕಮಗಳೂರು ಜಿಲ್ಲೆ, ಇವರು ಕಳೆದ ಸುಮಾರು 2ವರ್ಷಗಳಿಂದ ಕರೋನಾ ಖಾಯಿಲೆ ಕಾಣಿಸಿಕೊಂಡಾಗಿನಿಂದಲೂ ನನ್ನ ಮನೆಯಲ್ಲಿಯೇ ವಾಸವಾಗಿದ್ದ infosys companyಗೆ WFH ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಳು. ದಿನಾಂಕ 13–6–2022 ರಂದು ಕಂಪನಿಯ ಸಭೆಗೆ ಹೋಗಬೇಕೆಂದು ಸಿಹಿ ವಸ್ತುಗಳನ್ನು ಸಹಪಾಠಿಗಳಿಗೆ ಹಂಚಲು ಸಹ ಸಿದ್ದಳಾಗುತ್ತಿದ್ದಳು.*

*ನನ್ನ ಮಗಳ ವಿವಾಹವು ಕನೋಡಿಯ ಶ್ರೀ ರವೀಂದ್ರ ಹೆಗಡೆ ಹಾಗೂ ಶ್ರೀಮತಿ ಪೂರ್ಣಿಮ ಹೆಗಡೆಯವರ ಮಗ ಶ್ರೀ ನಿರಂಜನ್ ಹೆಗ್ಗಡೆ ಜೊತೆ ದಿನಾಂಕ 11–12–2017 ಸೋಮವಾರದಂದು ಕನೋಡಿಯ ಶ್ರೀ ದುರ್ಗಾ ಪರಮೇಶ್ವರಿ ದೇವಾಲಯದಲ್ಲಿ ಹಿಂದೂ ಸಂಪ್ರದಾಯದಂತೆ ನೆರವೇರಿತು.*

***ನನ್ನ ಮಗಳಾದ ರಕ್ಷಾ ವಿವಾಹವಾದ ನಂತರ ತನ್ನ ಗಂಡನ ಮನೆಯಲ್ಲಿ ವಾಸವಿದ್ದಳು ಕ್ರಮೇಣ ತನ್ನ ಗಂಡನಿಂದಾಗುತ್ತಿದ್ದ ಹಿಂಸೆ, ಕಿರುಕುಳ, ಅವಮಾನಗಳನ್ನು ತಿಳಿಸುತ್ತಿದ್ದಳು. ನಾನು ಮತ್ತು ನನ್ನ ಪತ್ನಿ ಡಾ ಅಂಬುಜಾಕ್ಷಿ ಮಗಳಿಗೆ ಪ್ರತಿ ಸಲ ಹೇಳಿದಾಗಲೆಲ್ಲಾ ತಾಳ್ಮೆಯಿಂದ ಸಂಸಾರದಲ್ಲಿ ಅತ್ತೆ ಮಾವ ಗಂಡನೊಂದಿಗೆ ಬಾಳಬೇಕೆಂದು ತಿಳುವಳಿಕೆ ಹೇಳುತ್ತಿದ್ದೆವು. ನಿರಂಜನ ಮದ್ಯ ಪಾನ ವ್ಯಸನಿ ಅವನನ್ನು ಸರಿಮಾಡಲು ದೇವರಿಂದಲೂ ಸಾಧ್ಯವಿಲ್ಲ. ಇವನ ವರ್ತನೆ, ಭಾಷೆ ನನಗೆ ಸಹಿಸಲು ಆಗುತ್ತಿಲ್ಲವೆಂದು ಗೋಳಾಡುತ್ತಿದ್ದವಳು.***

*ಬೆಂಗಳೂರಿಗೆ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ನಮ್ಮೊಂದಿಗೆ ಇದ್ದುಕೊಂಡು infosys companyಗೆ WFH ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದವಳು ಗಂಡನಿಂದ ನಿರಂತರ ಮಾನಸಿಕ ಹಿಂಸೆಯನ್ನು ಅನುಭವಿಸುತ್ತಿದ್ದಳು. ದೂರವಾಣಿ ಕರೆ ಮಾಡಿದಾಗಲೆಲ್ಲ ನನ್ನ ಮಗಳ ಕಣ್ಣೀರು ಬಂದಾಗುವವರೆಗೂ ಅವಳಿಗೆ ಕೆಟ್ಟ ಭಾಷೆಯಿಂದ ಬೈಯುವುದು ನಿನ್ನ BE. M Tech MBA ಗೆ ನನ್ನ ಸಮಾನ ನಿನ್ನ qualification ನೀನೇ ಇಟ್ಟುಕೋ ಇತ್ಯಾದಿಯಾಗಿ ಅವಳ ದಿನದ ಬಾಳು ಹಾಗೂ ನಮ್ಮೊಂದಿಗೆ ಅಘಾತ ಉಂಟು ಮಾಡುತ್ತಿದ್ದನು. ನಾನು ನನ್ನ ಪತ್ನಿ ಅವರಿಬ್ಬರ ದೂರವಾಣಿ ಕರೆಗಳನ್ನು ಆಗಾಗ ಮಗಳು ಕೇಳಿಸಿಕೊಳ್ಳುವಂತೆ ಹೇಳಿದಾಗ ಕೇಳಿಸಿಕೊಂಡು ಅವಳಿಗೆ ಸದಾ ಸಮಾಧಾನವನ್ನೇ ಹೇಳುತ್ತಿದ್ದೆವು.* ***ನನ್ನ ಮಗಳ ಹೆಸರಿನಲ್ಲಿ ಇರುವ ಸ್ಥಿರಾಸ್ತಿಗಳನ್ನು ಮಾರಿ ಹಣ ಸಾಲ ತೀರಿಸಲು ತಂದುಕೊಡುವಂತೆ ಹಿಂಸೆ ಮಾಡುತ್ತಿದ್ದಾನೆಂದು ಈಗಾಗಲೆ ನನ್ನಿಂದ ಅನೇಕ ಸಲ ನನ್ನ ಹಣವನ್ನು ಪೀಡಿಸಿ ಲೀಗೆ ಕುಡಿಯೋದಕ್ಕೆ ಕ್ಲಬ್‌ಗಳಲ್ಲಿ ಕುಡಿಯೋದಕ್ಕೆ ಕೇಳುತ್ತಿದ್ದ. ನಾನು ಎಧಿಯಿಲ್ಲದೆ ಕೊಡಿತ್ತಿದ್ದೆ ಎಂದು ಹೇಳುತ್ತಿದ್ದು ನನ್ನ ಮಗಳು 2019 ರಲ್ಲಿ ಗರ್ಭಿಣಿಯಾದಾಗ ಜನವರಿ ತಿಂಗಳಲ್ಲಿ ಅವಳನ್ನು ಮಂಗಳೂರಿನ ನರ್ಸಿಂಗ್ ಹೋಂಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಲವಂತವಾಗಿ ಅಬಾರ್ಷನ್ ಮಾಡಿಸಿದ್ದಲ್ಲದೆ ಆ ಆಸ್ಪತ್ರೆಯ ಖರ್ಚು ನನ್ನಿಂದಲೇ ಕಟ್ಟಿಸಿದನು. ಕರುಣೆ ಇಲ್ಲದವನು ನನ್ನ ಗಂಡ ನಾನು ಹೇಗೆ ಇವನ ಹತ್ತಿರ ಬಾಳಿ ಬದುಕುವುದು ಎಂದು ನಮಗೆ ಹೇಳಿದಾಗ ಅದಕ್ಕೂ ನಾವು ಅವಳಿಗೆ ಕಾಲ ಒಳ್ಳೆಯದು ಬರುತ್ತೆ ಸುಖವಾದ ಜೀವನ ಸಿಗುತ್ತೆ. ನಿನ್ನ ಅತ್ತೆ ಮಾವ ಗೌರವಸ್ಥರು ನಿನ್ನ ಪರ ಅವರಿದ್ದಾರೆ ಅಲ್ಲದೆ ಅವರ ಹಿರಿಯಣ್ಣ ಜಗದೀಶ ಹೆಗ್ಡೆರವರಿದ್ದಾರೆ ಧೈರ್ಯವಾಗಿರು ಎಂದು ಬುದ್ಧಿವಾದ ಹೇಳುತ್ತಿದ್ದೆವು. ತನ್ನ ಗಂಡನ ಸಾಲಗಳು ಮತ್ತು ಅವರ ಅರೆ ಕುಡಿತದ ದುರಭ್ಯಾಸ ನಂತರ ಅವರ ಸಹ ಜೀವನ ವೈಯಕ್ತಿಕವಾಗಿ ನನಗೆ ತುಂಬಾ ನೋವು ತರುತ್ತಿದೆ ಅವನು ಕಂಠಪೂರ್ತಿ ಕುಡಿದು ಮೈಮರೆತ ಮೇಲೆ ಅವನ ಬಾಯಲ್ಲಿ ಬರುವ ಭಾಷೆಯನ್ನು ಕಿವಿಯಲ್ಲಿ ಕೇಳಲಾಗುವುದಿಲ್ಲ. ಆ ರೀತಿಯಲ್ಲಿ ನನ್ನನ್ನು, ನನ್ನ ಏನ್ಸೆ ಬಗ್ಗೆ, ನನ್ನ ಸಂಸ್ಕೃತಿಯ ಬಗ್ಗೆ ಅವಹೇಳನ ಮಾಡ್ತಾನೆ ಕನೋಡಿಯಲ್ಲಿ ಇರಲು ಆಗೋಲ್ಲ ಎಂದು ಅಳುತ್ತಿದ್ದವಳು ಸಹ ಧೈರ್ಯವಾಗಿರುತ್ತಿದ್ದಳು.***

***ನನ್ನ ಅಳಿಯ ಬೆಂಗಳೂರಿಗೆ ಆಗಾಗ್ಗೆ ಬಂದಾಗ ನನ್ನ ಮನೆಯಲ್ಲಿ ಹೆಂಡ್ತಿ ಜೊತೆ ಜಗಳ ಮಾಡಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದನು.***

*ತನ್ನ ಗಂಡ ನನಗೆ ದೈಹಿಕವಾಗಿ ಹೊಡೆದಾಗ ಬಂದ ದಿನ ರಾತ್ರಿ ಕಳಸ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ದೂರು ನೀಡಿದ್ದಾರೆಂದು ಆ ಬಗ್ಗೆ ಪೊಲೀಸರು ಭೀಮಾರಿ ಹಾಕಿದರೆಂದು ಹೇಳಿದ್ದಳು.*

***ಇಷ್ಟಾದರೂ ನಮ್ಮ ಮನೆತನದ ಗೌರವ, ತಂದೆ ತಾಯಿಯವರಿಗಾಗಿ ಅವನೊಂದಿಗೆ ಬದುಕಲು ಇನ್ನು ಪ್ರಯತ್ನ ಮಾಡ್ತೇನೆಂದು ಹೇಳುತ್ತಿದವಳು ದಿನಾಂಕ:12/6/22 ರಂದು ಭಾನುವಾರ ತನ್ನ ಗಂಡ ಬರುತ್ತಿದ್ದಾನೆಂದು ಹೇಳಿದಳು ಪೋನಿನಲ್ಲಿ ಗಂಡನೊಂದಿಗೆ ಮದ್ಯಾಹ್ನ ಮಾತನಾಡುತ್ತಿರಬೇಕಾದರೆ ಬಹಳ ದು:ಖದಿಂದ ಅವನೊಂದಿಗೆ ಮಾತನಾಡಿ ಏನೂ ಬುದ್ದಿವಾದ ಹೇಳುತ್ತಿದ್ದಳು. ಅವನು ಬಹಳ ಕೆಟ್ಟದಾಗಿ ಬೈದು ಅವಳ ಕಣ್ಣಲ್ಲಿ ನೀರನ್ನು ಹಾಕಿಸಿದನು ನಾವು ಬೇಸರ ಬೇಡಮ್ಮ, ತಾಳ್ಮೆ ಇರಲಿ ಎಂದು ಹೇಳಲಾಗಿ ಅಮ್ಮಾ ಅಪ್ಪ ನನ್ನ ತಾಳ್ಮೆಗೆ ಬೆಲೆನೇ ಇಲ್ಲಾ ನನಗೇನಾದರೂ ಆದರೆ ಆ ದೇವರೆ ನೋಡಿಕೊಳ್ಳಲಿ ನಾನು ಅವನ ಮೇಲೂ ನಿಮ್ಮ ಮೇಲೂ ಕೆಟ್ಟದ್ದನ್ನು ಬಯಸೋದಿಲ್ಲ. ನನಗೆ ನೀವು ಹೆಚ್ಚು ವಿದ್ಯೆ, ಸಂಸ್ಕಾರ ಕೊಟ್ಟಿದ್ದೀರಿ ಕಾಯುತ್ತೇನೆ.*** *ಕೆಲಸ ಮಾಡುತ್ತೇನೆ ನನ್ನ ಕಾಲುಗಳ ಮೇಲೆ ನಾನು ನಿಂತು ನಿಮ್ಮನ್ನೆಲ್ಲಾ ಸಂತೋಷ ಪಡಿಸ್ತೀನಿ ಎಂದು ಹೇಳಿದಳು. ಭಾನುವಾರ ರಾತ್ರಿ 11–00 ಗಂಟೆಯಲ್ಲಿ ನಮ್ಮೊಂದಿಗೆ ಇದ್ದವಳು ರಾತ್ರಿ ಸಮಯದಲ್ಲಿ ತನ್ನ ಬೆಡ್ ರೂಂನಲ್ಲಿ ರೂಫ್ ಸೀಲಿಂಗ್‌ಗೆ ನೇಣು ಹಾಕಿಕೊಂಡು ಮೃತಪಟ್ಟಿದಾಳೆ. ಇವಳ ಆತ್ಮಹತ್ಯೆಗೆ ಈಕೆಯ ಗಂಡ ನಿರಂಜನ ಒಬ್ಬನೇ ಕಾರಣನಾಗಿದ್ದಾನೆ. ಈ ನನ್ನ ಮಗಳ ಆತ್ಮಹತ್ಯೆಯ ಬಗ್ಗೆ ಸರಳ ದೂರನ್ನು ನೀಡಿದ್ದು, ನಿಮ್ಮ ಠಾಣೆಯಲ್ಲಿ ಯುಡಿಆರ್ 16/22 ದಾಖಲಾಗಿದೆ. ನಾನು ಆ ದೂರನ್ನು ನೀಡುವಾಗ ನನ್ನ ಮನಸ್ಸು ಛಿದ್ರವಾಗಿದ್ದು ವಿವರಗಳನ್ನು ಅದರಲ್ಲಿ ಬರೆದಿರುವುದಿಲ್ಲ. ನನ್ನ ಅಳಿಯನ ಕುಡುಕುತನ, ದುರ್ವರ್ತನೆ, ದುರಾಸೆ, ಅವನು ಹೆಂಡತಿಗೆ ನೀಡುತ್ತಿದ್ದ ನಿರಂತರ ಮಾನಸಿಕ ಹಿಂಸೆ ಮತ್ತು*

*ದೈಹಿಕ ವರ್ತನೆ ಕಾರಣವಾಗಿದ್ದು ನನ್ನ ಮಗಳು ಅವರ ಕಿರುಕುಳ ತಡೆದು ಕೊಳ್ಳಲಾರದೆ ತನ್ನ ಜೀವನವನ್ನು ಆತ್ಮಹತ್ಯೆಯನ್ನು ಮಾಡಿಕೊಂಡು ಮುಗಿಸಿ ಕೊಂಡಿರುತ್ತಾಳೆ. ಕಾನೂನು ರೀತ್ಯ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಕೋರಿ ಪಿರ್ಯಾದನ್ನು ನೀಡಿದ್ದಾನೆ.*

*ತಮ್ಮ ವಿಧೇಯ*

*ಸಹಿ/-*
*ವಿಜಯಕುಮಾರ್*
*14/6/22."*

*(Emphasis added)*

A perusal at the complaint registered on 14-06-2022 would indicate circumstances which would touch upon the ingredients of the offence, as the father narrates on 12-06-2022 the petitioner and the deceased were in long conversation and after the conversation it is the narration in the complaint that the daughter was in deep mental stress and tears. The complaint also narrates that when the daughter was pregnant in the year 2019, the petitioner husband takes her to a hospital and gets forcible abortion to her. The complaint also narrates transfer of certain money at intermittent intervals to the son-in-law. In the teeth of this complaint, it is germane to notice the allegations made *qua* the offences punishable under the IPC. Section 304B of the IPC which is the crux of the allegations reads as follows:

> *"304B.* ***Dowry death****.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown* ***that soon before her death*** *she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*
>
> *Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
>
> ***(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."***
>
> *(Emphasis supplied)*

Section 304B of the IPC directs that when a death of a woman is caused by burns or bodily injury or otherwise occurs under normal circumstances within seven years of her marriage and it is shown that *soon before her death* she was subjected to cruelty by her husband or any relative of her husband in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death. The daughter of the complainant commits

suicide on the night of 12-06-2022. The complaint narrates that on the night of 12-06-2022 just before the fateful incident she was in conversation with her husband. Whether the conversation with the husband before her death has led to commission of suicide or it was collective harassment for years that has exploded in the said commission of suicide is a matter to be necessarily tried, as *prima facie* the complaint narrates such instances which could become ingredients of Section 304B of the IPC.

10. The learned counsel appearing for the respondent No.2 has placed on record the transactions between the account of the father of the deceased and the son-in-law which narrates certain amounts being transferred intermittently. So are the amounts transferred from the account of the husband/petitioner to his wife. But, nonetheless from the father-in-law, there are transfers of amounts to the son-in-law. The quantum of amount is not the issue, but the transfer of amounts would require evidence as to whether it was demand of dowry or otherwise. The

phrase ***'soon before'*** as obtaining under Section 304B IPC has been interpreted by the Apex Court while interpreting Section 304B of the IPC. A three Judge Bench of the Apex Court in the case of ***KANS RAJ v. STATE OF PUNJAB***[1] has held as follows:

> *"**15.** It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit.* ***This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case.*** *In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time.* ***If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the***

[1] ***(2000) 5 SCC 207***

> ***effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."***
>
> *(Emphasis supplied)*

The Apex Court holds that there cannot be straight jacket formula for interpretation of the phrase 'soon before'. It is a relative term which is required to be considered under specific circumstances of each case. 'Soon before' is not synonymous with the term 'immediately before'. The Apex Court in a later judgment in the case of ***SURINDER SINGH v. STATE OF HARYANA***[2] while again dealing with Section 304B of the IPC has held as follows:

> *"15. Section 113-B of the Evidence Act, 1872 states that:*
>
> > ***"113-B.Presumption as to dowry death**.— When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, **the court shall presume that such person had caused the dowry death."***

[2] ***(2014) 4 SCC 129***

*16. Section 304-B IPC states that:*

> *"**304-B.Dowry death**.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death."*

***17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case.*** *The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman.* ***Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may***

***remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.***

*18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207: 2000 SCC (Cri) 935] where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)*

> *"15. … 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry*

> *demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."*
>
> ***Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."***
>
> *(Emphasis Supplied)*

11. The Apex Court also considers Section 113B of the Evidence Act, 1872 wherein the presumption as to dowry death is against the accused unless otherwise proved. The Apex Court also interprets the phrase 'soon before' as obtaining in Section 304B of the IPC. The Apex Court in a later judgment in the case of ***STATE OF MADHYA PRADESH v. JOGENDRA AND ANOTHER***[3] has again interpreted the phrase *'soon before'* as not to be synonymous of the phrase *'immediately before'*. Any limited interpretation given to the word 'soon before' will defeat

[3] ***(2022) 5 SCC 401***

the very spirit of the statute itself. The Apex Court has held as follows:

> *"9. The most fundamental constituent for attracting the provisions of Section 304-B IPC is that the death of the woman must be a dowry death. The ingredients for making out an offence under Section 304-B have been reiterated in several rulings of this Court. Four prerequisites for convicting an accused for the offence punishable under Section 304-B are as follows:*
>
> *(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;*
>
> *(ii) that such a death must have occurred within a period of seven years of her marriage;*
>
> *(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and*
>
> *(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.*
>
> *10. As the word "dowry" has been defined in Section 2 of the Dowry Prohibition Act, 1961 (for short "the Dowry Act"), the said provision gains significance and is extracted below:*
>
> *"**2. Definition of "dowry"**.—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly:*
>
> *(a) by one party to a marriage to the other party to the marriage; or*
>
> *(b) by the parents of either party to a marriage or by any other person, to*

*either party to the marriage or to any other person;*

*at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.*

*Explanation-I. * * **

*Explanation II.—The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."*

*11. In a three-Judge Bench decision of this Court in Rajinder Singh v. State of Punjab [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] , Section 2 of the Dowry Act has been split into six distinct parts for a better understanding of the said provision, which are as follows : (SCC p. 485, para 8)*

*"8. A perusal of Section 2 shows that this definition can be broken into six distinct parts:*

*(1)* ***Dowry must first consist of any property or valuable security— the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever****.*

*(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.*

*(3) Such property or security can be given or agreed to be given either directly or indirectly.*

*(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other*

*person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.*

*(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.*

*(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to"."*

*(emphasis supplied)*

***12. In the light of the above provision that defines the word "dowry" and takes in its ambit any kind of property or valuable security, in our opinion, the High Court fell into an error by holding that the demand of money for construction of a house cannot be treated as a dowry demand.*** *In Appasaheb case [Appasaheb v. State of Maharashtra, (2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] referred to in the impugned judgment [Jogendra v. State of M.P., Criminal Appeal No. 48 of 2004, decided on 10-9-2008 (MP)] , this Court had held that a demand for money from the parents of the deceased woman to purchase manure would not fall within the purview of "dowry", thereby strictly interpreting the definition of dowry. This view has, however, not been subscribed to in Rajinder Singh case [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477: (2015) 3 SCC (Cri) 225] wherein it has been held that the said decision as also the one in Vipin Jaiswal v. State of A.P. [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] , do not state the law correctly. Noting that the*

*aforesaid decisions were distinct from four other decisions of this Court viz. Bachni Devi v. State of Haryana [Bachni Devi v. State of Haryana, (2011) 4 SCC 427 : (2011) 2 SCC (Cri) 280] , Kulwant Singh v. State of Punjab [Kulwant Singh v. State of Punjab, (2013) 4 SCC 177 : (2013) 2 SCC (Cri) 339] , Surinder Singh v. State of Haryana [Surinder Singh v. State of Haryana, (2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] and Raminder Singh v. State of Punjab [Raminder Singh v. State of Punjab, (2014) 12 SCC 582 : (2014) 5 SCC (Cri) 116] ,* ***the Court opined that keeping in mind the fact that Section 304-B was inserted in IPC to combat the social evil of dowry demand that has reached alarming proportions, it cannot be argued that in case of an ambiguity in the language used in the provision, the same ought to be construed strictly as that would amount to defeating the very object of the provision. In other words, the Court leaned in favour of assigning an expansive meaning to the expression "dowry" and held thus: (Rajinder Singh case [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477: (2015) 3 SCC (Cri) 225] , SCC p. 491, para 20)***

> *"20. [**Ed.** : Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2015 dated 6-4-2015.] Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb case [Appasaheb v. State of Maharashtra, (2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] followed by the judgment of Vipin Jaiswal [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] do not state the law correctly.* ***We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married***

***woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.***"

*(emphasis supplied)*

***13. The Latin maxim "Ut res magis valeat quam pereat" i.e. a liberal construction should be put up on written instruments, so as to uphold them, if possible, and carry into effect, the intention of the parties, sums it up. Interpretation of a provision of law that will defeat the very intention of the legislature must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation meant to uproot a social evil like dowry demand. In this context, the word "dowry" ought to be ascribed an expansive meaning so as to encompass any demand made on a woman, whether in respect of a property or a valuable security of any nature. When dealing with cases under Section 304-B IPC, a provision legislated to act as a deterrent in the society and curb the heinous crime of dowry demands, the shift in the approach of the courts ought to be from strict to liberal, from constricted to dilated. Any rigid meaning would tend to bring to naught, the real object of the provision. Therefore, a push in the right direction is required to accomplish the task of eradicating this evil which has become deeply entrenched in our society.***

*14. In the facts of the instant case, we are of the opinion that the trial court has correctly interpreted the demand for money raised by the respondents on the deceased for construction of a house as falling within the definition of the word "dowry". The submission made by the learned counsel for the respondents that the deceased was also a party to such a demand as she had on her own asked her mother and maternal uncle to contribute to the construction of the house, must be understood in the*

*correct perspective. It cannot be lost sight of that the respondents had been constantly tormenting the deceased and asking her to approach her family members for money to build a house and it was only on their persistence and insistence that she was compelled to ask them to contribute some amount for constructing a house. The Court must be sensitive to the social milieu from which the parties hail. The fact that the marriage of the deceased and Respondent 1 was conducted in a community marriage organisation where some couples would have tied the knot goes to show that the parties were financially not so well off. This position is also borne out from the deposition of PW 1 who had stated that he used to bear the expenses of the couple. Before the marriage of the deceased also, PW 1 had stated that he used to bear her expenses and that of her mother and brother (his sister and nephew) as her father had abandoned them. In this background, the High Court fell in an error in drawing an inference that since the deceased had herself joined her husband and father-in-law, the respondents herein and asked her mother or uncle to contribute money to construct a house, such demand cannot be treated as a "dowry demand". On the contrary, the evidence brought on record shows that the deceased was pressurised to make such a request for money to her mother and uncle. It was not a case of complicity but a case of sheer helplessness faced by the deceased in such adverse circumstances.*

*15. Now, coming to the second point urged by the learned counsel for the State that the High Court has overlooked the fact that Geeta Bai had been subjected to cruelty/harassment at the hands of the respondents soon before her death, which submission is strictly contested by the learned counsel for the respondents, we may note that the meaning of the expression "soon before her death" has been discussed threadbare in several judgments. In SurinderSingh [Surinder Singh v. State of Haryana, (2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] , while relying on the provisions of Section 113-B of the Evidence Act, 1872 (for short "the Evidence Act") and Section 304-B IPC,*

*where the words "soon before her death" find mention, the following pertinent observations have been made : (SCC pp. 137-39, paras 17-18)*

> *"17.* ***Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case****. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain, etched in her memory for a long time.* ***Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death****.*

*18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207: 2000 SCC (Cri) 935] where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)*

*'15. ...* ***"Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act.*** *These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case.* ***In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death****. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the*

> *prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.'*

*Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."*

*(emphasis supplied)*

*16. In Rajinder Singh [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] , falling back on the rulings in Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] , Dinesh v. State of Haryana [Dinesh v. State of Haryana, (2014) 12 SCC 532 : (2014) 6 SCC (Cri) 839] and Sher Singh v. State of Haryana [Sher Singh v. State of Haryana, (2015) 3 SCC 724 : (2015) 2 SCC (Cri) 422] , it has been emphasised that "soon before" is not synonymous to "immediately before" and the following observations have been made : (Rajinder Singh case [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] , SCC p. 493, para 24)*

> *"24.* ***We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate".*** *A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression.* ***Time-lags may differ from case to case. All that is necessary is that the demand for dowry should***

> ***not be stale but should be the continuing cause for the death of the married woman under Section 304-B."***
>
> *(Emphasis supplied)*

In the light of the contention of the learned counsel appearing for the petitioner that ingredients of Section 304B of the IPC are not satisfied in the case at hand is unacceptable. The contention is that it should be 'soon before death' and soon before death is required to be interpreted as 'immediately before death' and the deceased leaving matrimonial house two years ago would not mean immediately before death, are all repellable, as it is too far-fetched to be considered at this juncture. The FIR is registered for offences punishable under Section 304B of the IPC along with other offences. The complaint and the narration *prima - facie* indicate ingredients of Section 304B of the IPC.

12. The other offence that is laid is, Section 313 of the IPC which is forcible abortion. The complaint narrates that pregnancy of the daughter was forcibly aborted by the husband in the year 2019 before she left the matrimonial house. Section 498A of the IPC is invoked on the allegation of demand for dowry

and transfer of money. The complaint narrates the incidents and there are documents placed now to indicate the funds being transferred from the father-in-law to the son-in-law. Therefore, *prima facie,* ingredients of all offences are met for registration of the crime and conduct of investigation.

13. The learned High Court Government Pleader has placed on record investigation papers which would be a vindication of the stand of the learned counsel for the respondent No.2. Any observation made with regard to the statements recorded during the investigation would prejudice the case of the petitioner or his defense that he has to take in further proceedings.

14. The submission of the learned counsel appearing for the petitioner, by producing chats of i-message, facebook or whatsapp, to buttress his submission that there was dispute in the family of the complainant itself and that might have led to commission of suicide by the daughter of the complainant, is again a matter of trial. The matter with such serious offence as

could be gathered from available documents on record cannot be interjected at this juncture, as there are undoubtedly plethora of seriously disputed questions of fact. The primary ingredient of death happening before 7 years of marriage exists in the case at hand, as the couple got married in the year 2017 and the daughter of the complainant commits suicide on 12-06-2022. What has driven the daughter to commit suicide either cruelty or demand of dowry, is to be thrashed out in a full blown trial. The Apex Court in the case of ***AJAY KUMAR DAS v. STATE OF JHARKHAND AND ANOTHER***[4] while considering the offence of Section 304B of the IPC and its interference under Section 482 of the Cr.P.C. has held as follows:

> *"8. Having heard the learned counsel appearing for the parties, we may appropriately refer to a decision of this Court in Shanti v. State of Haryana [(1991) 1 SCC 371 : 1991 SCC (Cri) 191 : AIR 1991 SC 1226] . What was considered in that case by this Court was a case of dowry death under Section 304-B and also a case of cruelty under Section 498-A of the Penal Code. While dealing with the aforesaid provisions, this Court has held that the two sections are not mutually exclusive.* ***It was also held that a person charged and acquitted under Section 304-B could be convicted under Section 498-A without charge being there if such a case is made out. This Court, however, hastened to add that to avoid***

[4] ***(2011) 12 SCC 319***

***technical defects it is necessary in such cases to frame charges under both the sections and that if the case is established then they can be convicted under both the sections but no separate sentences need be awarded under Section 498-A in view of the substantive sentences being awarded for the major offence under Section 304-B.***

*9. In the decision in Shanti case [(1991) 1 SCC 371 : 1991 SCC (Cri) 191 : AIR 1991 SC 1226] , this Court considered the scope and ambit of Section 304-B IPC and also of Section 498-A IPC. Reference was also made to provisions of Section 113-B of the Evidence Act. It was held that Section 113-B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry then the Court would presume that such a person has committed the dowry death. It was also held that the meaning of "cruelty" for the purpose of this section has to be gathered from the language as found in Section 498-A and as per that section "cruelty" means "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 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".*

*... ... ...*

***16. We are, however, of the considered opinion that on a reading of the first information report and the materials that are available in the case file of the appellant that no case is made out so as to quash the entire proceeding. Therefore, while rejecting the contention of the counsel appearing for the appellant so far quashing of the proceedings is concerned we give him the liberty to raise all his defence as may be available to him in accordance with law at the time of framing of the charge and at***

> ***that stage the Court shall consider the material on record as also the contentions raised by the appellant in proper perspective and decide the matter in accordance with law. We also make it clear that any observation made by us herein would not be in any manner construed as our observations or views with regard to the merit of the case or the defence of the appellant."***
>
> *(Emphasis supplied)*

The Apex Court holds that in an offence under Section 304B of the IPC, on reading of the complaint and the materials that are available, no case was made out to quash the entire proceedings by rejecting the contention of the complainant. The case at hand is also one such, where the complainant has placed on record such material that would demand further proceedings to be continued against the petitioner and the petitioner has not placed on record any document that is so unimpeachable and of sterling quality which would entail quashment of entire proceedings at the stage of registration of FIR itself.

15. The learned counsel for the respondent No.2 is right in placing reliance on the judgment in the case of ***DINESHBHAI***

***CHANDUBHAI PATEL*** *(supra)* wherein the Apex Court has held as follows:

> *"27. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.*
>
> ... ... ...
>
> *30* ***[Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.] .*** *At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.*
>
> ***31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code."***
>
> *(Emphasis supplied)*

In the case of ***KAPTAN SINGH*** *(supra),* the Apex Court has held as follows:

> *"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.* ***Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai***

***Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.***

*9.2. In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.*

*9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.*

***10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation.*** *The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.*

*11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.*

*12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.*

*13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the*

*counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.*

*14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."*

*(Emphasis supplied)*

16. In the light of the facts obtaining in the case at hand and existence of seriously disputed questions of fact which have to be thrashed out only in a full blown trial, finding no ground to interject or interfere with further proceedings, the Criminal Petition lacking in merit, meets its dismissal, and is consequently dismissed.

It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the investigation or any further proceedings before any judicial fora.

Consequently, I.A.No.2/2022 also stands disposed.

**Sd/-**
**JUDGE**

bkp
CT:MJ