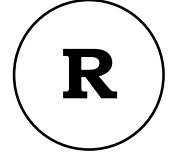


Reserved on : 28.06.2024
Pronounced on : 19.07.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.9653 OF 2023

C/W

WRIT PETITION No.19687 OF 2023 (GM-RES)

WRIT PETITION No.23864 OF 2023 (GM-RES)

IN CRIMINAL PETITION No.9653 OF 2023

BETWEEN:

- 1 . MR. MOHAMED SHAHID
S/O MOHAMED YOUSUFF SAIT
AGED ABOUT 31 YEARS.

- 2 . MRS. HOORNAZ BANU
W/O MOHAMED YOUSUFF SAIT
AGED ABOUT 58 YEARS.

BOTH ARE RESIDING AT:
FLAT NO.F-01, NO.37/1,
BERLIE STREET
LANGFORD TOWN
INCLOVER HAVEN
BENGALURU – 560 025.

(BY SRI SIDDHARTH B.MUCHANDI, ADVOCATE)

... PETITIONERS

AND:

- 1 . STATE OF KARNATAKA
BY BASAVANAGUDI
WOMEN POLICE STATION
BASAVANAGUDI, BENGALURU – 560 070
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU – 560 001.

- 2 . MRS. AFREEN
W/O MOHAMED SHAHID
AGED ABOUT 26 YEARS
FLAT NO.102, 1ST FLOOR
197 FALCON, RENAISSANCE
R.V.ROAD CROSS
OPP. DASS COMPOUND
BASAVANAGUDI
BENGALURU – 560 004.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1;
SRI C.V.NAGESH, SR. ADVOCATE FOR
SRI NAGARAJ R., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET AND THE ENTIRE PROCEEDINGS IN C.C.NO.11622/2023 FOR THE ALLEGED OFFENCE P/U/S.498-A, 504 R/W SEC.34 OF IPC AND SEC.3 AND 4 OF DP ACT REGISTERED BY THE RESPONDENT NO.1 POLICE (BASAVANAGUDI WOMEN P.S.,) PENDING ON THE FILE OF THE LEARNED 37th ADDITIONAL CMM COURT BENGALURU VIDE ANNEXURE C AND D.

IN WRIT PETITION No.19687 OF 2023

BETWEEN:

SMT. AFREEN
W/O MOHAMED SHAHID
AGED ABOUT 26 YEARS
RESIDING AT FLAT NO.102,
1ST FLOOR, 197
FALCON RENAISSANCE
R.V.ROAD CROSS,
OPP. DASS COMPOUND
BASAVANGUDI,
BENGALURU – 560 004.

... PETITIONER

(BY SRI C.V.NAGESH, SR. ADVOCATE FOR
SRI NAGARAJ R., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
SHO, ASHOK NAGAR
POLICE STATION, BENGALURU
REPRESENTED BY HCGP,
HIGH COURT OF KARNTAKA
BENGALURU.

2 . MOHAMED SHAHID
AGED ABOUT 31 YEARS
RESIDING AT: FLAT F-01, INCLOVER
HAVEN NO.37/1, BERLIE STREET
LANGFORD TOWN,
BENGALURU – 560 025.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1;
SRI SIDDHARTH B.MUCHANDI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIRST INFORMATION REPORT REGISTERED IN CRIME NO.251 OF 2023 ANNEXURE-A FOR THE OFFENCES PUNISHABLE U/S 307, 380, 411, 506 R/W SECTION 511 AND 34 OF THE INDIAN PENAL CODE, 1860 AND SECTION 3 OF THE KARNATAKA PREVENTION AND ERADICATION OF INHUMANE EVIL PRACTICES AND BLACK MAGIC ACT, 2017 IN PURSUANT TO FALSE AND FRIVOLOUS COMPLAINT BY THE R2 ANNEXURE-B IN PCR NO.51647 OF 2023 *QUA* THE PETITIONER.

IN WRIT PETITION No.23864 OF 2023

BETWEEN:

SHABAZ MASOOM
(WRONGLY MENTIONED AS
SHAHBAZ @ MASOOM)
S/O OF MR. SADATH ULLA
AGED ABOUT 31 YEARS
RESIDING AT NO. 50
RANAJI RAO ROAD
BASAVANAGUDI
BENGALURU - 560 004.

... PETITIONER

(BY SRI C.V.NAGESH, SR. ADVOCATE FOR
SRI MADHUR A.KALYANSHETTY, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY
STATION HOUSE OFFICER
ASHOK NAGAR POLICE STATION
BENGALURU – 560 025.

2 . MOHAMED SHAHID
S/O MOHAMED YOUSEF
AGED ABOUT 31 YEARS
RESIDING AT FLAT F-01
INCLOVER HAVEN
NO. 37/1, BERLIE STREET
LANGFORD TOWN
BENGALURU – 560 025.

... RESPONDENTS

(BY SRI THEJESH P. HCGP FOR R1;
SRI SIDDHARTH B.MUCHANDI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED COMPLAINT DATED 21.02.2023 FILED BY R-2 PENDING ON THE FILES OF THE LD.MAGISTRATE IN PCR NO.51647/2023. (ANNEXURE-B). IN SO FOR AS PETITIONER CONCERN ONLY AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

Protagonists in these cases are wife, husband, mother-in-law and a friend of the wife. **Criminal Petition No.9653 of 2023** is preferred by the husband and mother-in-law of the wife who are accused Nos. 1 and 2 calling in question the proceedings initiated in C.C.No.11622 of 2023 pending before the 37th Additional Chief

Metropolitan Magistrate, Bangalore arising out of crime in Crime No.22 of 2023 registered for offences punishable under Sections 498A, 323 and 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('the 1961 Act' for short). **Writ Petition No.19687 of 2023** and **Writ Petition No. 23864 of 2023** are preferred by the wife who is accused No.1 and accused No.2 who is said to be known to the wife calling in question crime in Crime No.251 of 2023 registered pursuant to the private complaint filed by the husband in PCR No.51647 of 2023 pending before the 29th Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru for offences punishable under Sections 380, 411, 506, 307, 511 and 34 of the IPC and Section 3 of the Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017 ('the Act' for short). Since these cases are interlinked, they are taken up together and considered in this order.

2. Criminal Petition No.9653 OF 2023:

The 1st petitioner is the husband of the complainant/2nd respondent and the 2nd petitioner is the mother-in-law. They are accused Nos. 1 and 2 in C.C.No.11622 of 2023. Facts in brief

concerning this petition are that the 1st petitioner and the complainant get married on 30-06-2018. After the marriage registration in accordance with the Special Marriage Act, 1954 also is put in place. The 1st petitioner/husband registers a complaint before the jurisdictional Police which becomes a crime in Crime No.85 of *2020 for offences punishable under Section 381 of the IPC. The allegation was theft of money and gold jewels but against whom was not stated. The police conduct investigation and file a 'C' report. It is the allegation of the husband that statement of the complainant was recorded and notwithstanding the said recording 'C' report was deliberately filed. Between 30-07-2020 and 14-04-2022 two children are born from the wedlock. A complaint comes to be registered by the respondent/wife against the petitioners alleging offences punishable under Sections 498A, 323 r/w 34 of the IPC and Sections 3 and 4 of the 1961 Act on 24-01-2023. The Police after investigation filed a charge sheet not for all the aforesaid offences, but for the offence punishable under Sections 498A, 504 r/w 34 of the IPC and Sections 3 and 4 of the 1961 Act. The learned Magistrate taking cognizance of the offence on 23-05-2023 issues process to the petitioners. It is then the

**Corrected vide Chamber order dated 28.08.2024*

petitioners have knocked at the doors of this Court in the subject petition. This Court, in terms of its order dated 06-10-2023, has stayed further proceedings before the concerned Court and the same is in subsistence even today.

3. **Writ Petition No.19687 of 2023:** This writ petition is preferred by the wife calling in question registration of a crime by the husband. The incident that led to filing of the crime is that the wife is alleged to have been thrown out along with her children at around 4.00 a.m. on 11-06-2022 even without allowing the wife to take her documents and belongings, which happened due to frustration of certain alleged illicit relationship of the husband with another woman. On 10-07-2022 it is the further allegation that the complainant/husband barged into the house of the wife's father to take away the second child who was 9 months then and has threatened that he would kill the wife and abduct the children and take them outside India. On 13-01-2023 the wife files a petition seeking custody of the minor children in G & WC No.26 of 2023. On 16-01-2023 the Family Court grants interim custody of minor children in favour of the wife. After this comes crime in Crime

No.22 of 2023 which is the subject matter of the companion petition. It appears during the investigation, the Police seized gold ornaments allegedly belonging to the wife from the house of the husband. The wife files an application under Sections 451 and 457 of the Cr.P.C., for release of gold and silver ornaments. During the subsistence of the said application, the wife also initiates proceedings for annulment of marriage in M.C.No.1031 of 2023. It is then the husband prefers a private complaint on 21-02-2023 and the matter was referred for investigation and crime No.251 of 2023 comes to be registered thereto. It is registered for offences punishable under Sections 380, 411, 506, 307, 511 and 34 of the IPC and Section 3 of the Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017. The allegation in the FIR is theft and practice of provisions of the Act. The wife, after registration of the crime, has knocked at the doors of this Court in the subject petition.

4. **Writ Petition No.23864 of 2023**: This petition arises from the very crime i.e., Crime No.251 of 2023. Accused No.2 in the crime is the petitioner, friend of the wife. The complainant is

again the same viz., the husband. Therefore, bifurcation of the petitions goes this way. Criminal Petition No.9653 of 2023 is preferred by the husband and the mother-in-law calling in question proceedings in C.C.No.11622 of 2023 which arose out of crime in Crime No.22 of 2023. The other petitions are at the stage of investigation. They arise out of Crime in Crime No.251 of 2023.

5. Heard Sri Siddharth B. Muchandi, learned counsel appearing for the petitioners in Crl.P.No.9653 of 2023 and for respondent No.2 in W.P.No. 19687 of 2023 and W.P.No.23864 of 2023, Sri P. Thejesh, learned High Court Government Pleader appearing for respondent No. 1 in all the petitions, Sri C.V. Nagesh, learned senior counsel appearing for respondent No.2 in Crl.P.No.9653 of 2023 and for the petitioner in W.P.No.19687 of 2023 and W.P.No.23864 of 2023.

6. The learned counsel for the petitioners in Criminal Petition No.9653 of 2023 would contend that none of the offences alleged which are the ones punishable under Section 498A or Section 34 of the IPC are met in the case at hand. A perusal of the summary of

the charge sheet, according to him, would not make out any offence against these petitioners. Therefore, the proceedings are an abuse of the process of law. He would seek quashment of the same and places reliance upon plethora of judgments rendered by the Apex Court on the issue.

7. The learned senior counsel Sri C.V. Nagesh who appears for the petitioners in both the writ petitions and for respondent No.2 in the criminal petition would vehemently contend that the husband has gone on, registering crimes which are most untenable, as the crimes so registered are for the offences as afore-quoted. The theft that the husband alleges has happened three years ago. The Black Magic Act has been deliberately brought in without any iota of ingredients and for offence punishable under Section 307 of the IPC there is not even preparation or attempt to murder. He would contend the private complaint is deliberately registered as a counter-blast to what the wife has registered i.e., crime in Crime No.22 of 2023. Matters of 3 or 4 years vintage are sought to be agitated by the husband. He would seek quashment of proceedings in Crime No.251 of 2023.

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

9. The afore-narrated facts though not in dispute would require a little elaboration. The factum of marriage is not in dispute. A crime is registered by the husband in Crime No.85 of *2020 alleging theft of money and gold jewels. It is the averment in the petition that the husband comes across various exchanges of chats between one Shabaz Masoom, accused No.2 in Crime No.251 of 2023 and his wife. By then, the wife filed a complaint before the jurisdictional Police on 24-01-2023 which comes to be registered as crime in Crime No.22 of 2023 for the afore-quoted offences. The Police, after investigation, file a charge sheet on 01-05-2023 against the husband and the mother-in-law. The husband and the mother-in-law have called that in question in the criminal petition. The complaint is necessary to be noticed. It reads as follows:

"Date:24-01-2023

*From:
Smt. Afreen,*

**Corrected vide Chamber order dated 28.08.2024*

*W/o Mohamed Shahid,
Aged about 26 years,
R/a Flat No.102, 1st Floor,
197, Falcon Renaissance,
R.V.Road Cross,
Opp: Dass Compound,
Basavanagudi,
Bengaluru – 560 004.*

*To
The Basavanagudi Women's PS,
No.3806, Thaygarajanagar,
Banashankari, Bangalore
Karnataka – 560 070.
Sir,*

*Sub: **Complaint against (1) Sri Mohamed Shahid
S/o Mohamed Yousuff Sait (2) Hoornaz Banu
W/o Mohamed Yousuff Sait.***

- 1. I write to inform you that on 30-06-2018 I was married to the above mentioned Sri Mohamed Shahid. Since the date of my marriage, I have been under constant harassment of Dowry and Cruelty at the hands of my husband. After our marriage, myself and my husband were residing at matrimonial house i.e. No.430, first floor, 11th Main, Viveknagar, Bangalore-560 047.*
- 2. At the time of my marriage, my husband and his family has demanded that they want to have big fat Muslim wedding. Even though at the time of wedding we were going through financial crisis, my father tried all his best efforts to fulfill their wishes. On their demand our nikah (marriage) took place at, Princes Green, Gate No.9, Bangalore Palace Road, Palace Grounds, Bengaluru 560 006 and reception on the very next day at the same place. The said marriage was registered under Special Marriage Act, 1954 on 25-03-2019 at Sub-Registrar, Shivajinagar, Bangalore. All the expenses of my wedding was solely borne by my father. Further, my husband family demanded for expensive furniture's and my father spent around Rs.3,00,000/- (Rupees three lakhs only) to fulfill their lavish demands. My husband even asked my*

parents to make an accommodation to all the guest from groom side in a lavish hotel. My father thereby spent around Rs.1,50,000/- (Rupees one lakh fifty thousand only) and booked rooms at Confident Pentagon at Bangalore to lodge my In laws' guests. My mother-in-law (Accused No.2) demanded that my father should give at least 1 kg of gold at the time of wedding as dowry, in case if he failed to do so, they will call off my wedding. Thereafter, my father having no other option succumbed to the said demand and somehow managed to give 500 grams of gold to my husband.

3. *Even after commencing the marriage my husband and his family were no satisfied with the dowry sought. Day by day, their demanded started to increase. My husband wanted to invest in a business for which he wanted a huge amount and for the same he started to demand with my father. Apart from dowry demands, my husband used to constantly abuse me physically and also use foul language to me and my family for not getting enough dowry. My husband was supported by his relatives including his mother (Hoornaz Banu). My mother in-law used to independently assault me and also instigate my husband to physically assault me and also abuse me for getting more dowry. She created a hostile environment at home and ensured that my husband pushed me out of the house. I was put under severe physical and mental cruelty due to the said actions of my husband and his mother.*
4. *My husband and his mother were always blaming me for not paying enough amount and was asking me to call my father to ask for money. I have reliably learnt that my husband has several affairs. He used to constantly visit girls and used to compare our physical relationship with theirs. In the name of sex, my husband physically assaulted me and forced me to engage in unnatural acts for which I never consented. Recently, I came across that he is having an extra marital affair with one Ms. Madhuri Verma. After coming to know about the same, I immediately brought this to the Notice of the parents of my husband as mentioned above. Instead of advising my husband, the said parents told me that until I get huge*

amount from my father for him to invest in the business, they will encourage my husband in whatever illegal work he does.

5. *I state that my husband and his mother never used to let me to out of the house and also restrained me from talking to her parents. The respondents use to keep my phone in his custody.*
6. *Due to suspicion, I checked my husband's Whatsapp chats and I was shocked to see that he had been constantly texting with Ms. Madhuri Verma along with other girls. He had also sent sexually provoking messages to many women including his ex-girl friends from his college. I have been shattered and depressed due to the above said actions of my husband. When I asked my husband regarding his unethical activities, he got aggressive and started to assault me physically. He kicked me from his leg on my stomach, chest and other private parts. I even informed my mother in-law regarding all said events, but she being a woman without even thinking the pressure I was undergoing, stated that it is none of her business. She won't involve with any of these affairs and started to demand more money from my father. She even stated that its okay for her son to have several affairs, as I am not fulfilling his financial needs. Later on 11-06-2022, both my husband and his mother threw me and my first child i.e., Inayath Hawwa away from the matrimonial house. At this time, I had 8 months baby, my second child i.e., Abdul Ahad Azad. I without having any other choice went to my father's house along with my two children. Hence, to save myself from their clutches, I left from my matrimonial house along with my two children and presently residing with my parents at Jayanagar, Bengaluru.*
7. *At the time of sending me out of my matrimonial residence, they took my phone, my gold ornament which was presented by my father and my relatives and daughter's gold, cloths, my passport and my daughter Inayath Hawwa passport and other documents. Without any of said articles I went to my father's house and started to stay there. I had no job and hence my second*

child was only of 6 months old. I had to stay back at home to look after him. My phone is in my husband's custody and I am afraid that he will misuse the same.

8. *There were several attempts made by elders of my community to reconcile our marriage but none of their efforts became successful. We have reached the point where it makes no value or reason for this relationship. I have finally made sure of my decision and hence all that needs of reconcile will not add up anything to this matter. We have understood that my husband and his mother are not considering this as a marriage instead it was a merely a path for them to get money. The only purpose of this marriage to them was just to cause me a mental and physical harassment.*

In view of the above, I request you to take appropriate actions against the above mentioned Accused and book them under Sections 405, 420, 354 (Assault or criminal force to woman with intent to outrage her modesty), 354(D) (stalking), 378 (theft), 497 (adultery) and 498A read with 34 of Indian Penal Code, 1860 and also under Section 3 and 4 of the Dowry Prohibition Act, 1961.

*Yours sincerely,
Sd/- Smt. Afreen."*

The Police conduct investigation and file a charge sheet against both the husband and the mother-law. The summary of the charge sheet, as obtaining in column No.17, reads as follows:

"17. Brief facts of the case

ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕ್ರಮ ಸಂಖ್ಯೆ: 14 ರಲ್ಲಿನ ಸ್ವಾಕ್ಷಿ-1 ರವರು ಕ್ರಮ ಸಂಖ್ಯೆ:12 ರಲ್ಲಿನ ಎ-1 ಆರೋಪಿತನೊಂದಿಗೆ, ದಿನಾಂಕ:30/06/2018 ರಂದು ಇದೇ ಬೆಂಗಳೂರು ನಗರದ ಪ್ಯಾಲೇಸ್ ಗ್ರೌಂಡ್‌ನಲ್ಲಿ ಗುರು-ಹಿರಿಯರ ಹಾಗೂ ಸಂಬಂಧಿಕರ ಸಮ್ಮುಖದಲ್ಲಿ ಮುಸ್ಲಿಂ ಸಂಪ್ರದಾಯದಂತೆ ವಿವಾಹವಾಗಿರುತ್ತಾರೆ. ಮುದುವಗೂ ಮುನ್ನ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕ್ರಮ ಸಂಖ್ಯೆ:12 ರಲ್ಲಿನ ಎ-1 ಮತ್ತು ಎ-2 ಆರೋಪಿತರುಗಳು ಸ್ವಾಕ್ಷಿ-1 ರವರ ಕುಟುಂಬದವರಿಗೆ ಮದುವೆ ಸಮಯದಲ್ಲಿ

ವರದಕ್ಷಿಣೆಯಾಗಿ 1 ಕೆ.ಜಿ ಚಿನ್ನಾಭರಣಗಳನ್ನು ಹಾಗೂ ಫರ್ನಿಚರ್‌ಗಾಗಿ 3 ಲಕ್ಷ ರೂ ಹಣವನ್ನು ನೀಡಿ, ಅದ್ದರಿಂದಾಗಿ ವಿವಾಹ ಮಾಡಿಕೊಡುವಂತೆ ಒತ್ತಾಯಿಸಿದ್ದು, ಆಗ ಸಾಕ್ಷಿ-2 & ಸಾಕ್ಷಿ-3 ರವರುಗಳು ಮದುವೆ ಸಮಯದಲ್ಲಿ ಎ-1 ಆರೋಪಿ ಹಾಗೂ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಸೇರಿ ವರದಕ್ಷಿಣೆಯಾಗಿ ಚಿನ್ನಾಭರಣಗಳನ್ನು ನೀಡಿ ಮದುವೆ ಮಾಡಿಕೊಟ್ಟಿದ್ದು, ಮದುವೆ ನಂತರ ಸಾಕ್ಷಿ-1 ರವರು ಎ-1 ಮತ್ತು ಎ-2 ಆರೋಪಿ ಹಾಗೂ ಕುಟುಂಬದವರೊಂದಿಗೆ ವಾಸವಾಗಿದ್ದುಕೊಂಡು ಜೀವನ ನಡೆಸಿಕೊಂಡಿರುವಾಗ, ಎ-1 & ಎ-2 ಆರೋಪಿತರುಗಳು ವಿನಾಕಾರಣ ಸಾಕ್ಷಿ-1 ರವರೊಂದಿಗೆ ಜಗಳ ಮಾಡುವುದು, ಮದುವೆ ಸಮಯದಲ್ಲಿ ನೀಡಿರುವ ವರದಕ್ಷಿಣೆ ಕಡಿಮೆಯಾಗಿರುತ್ತದೆಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ನಿಂದಿಸುವುದು ಮಾಡಿರುತ್ತಾರೆ. ಎ-1 ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರ ತಂದೆ ಯವರಾದ ಸಾಕ್ಷಿ-2 ರವರು ನಡೆಸುತ್ತಿದ್ದ ಬಿಜಿನೆಸ್‌ನಲ್ಲಿ ಆತನನ್ನು ಭಾಗಿ ಮಾಡಿಸಿಕೊಳ್ಳುವಂತೆ ಸಾಕ್ಷಿ-1 ರವರು ಅವರ ಕುಟುಂಬದವರಿಗೆ ತಿಳಿಸುವಂತೆ ಹಾಗೂ ಎ-1 ಆರೋಪಿಯು ವ್ಯಾಪಾರದಲ್ಲಿ ಹಣ ಹೂಡಿಕೆ ಮಾಡಲು ಸಾಕ್ಷಿ-1 ರವರು ತನ್ನ ತವರು ಮನೆಯಿಂದ ಹಣವನ್ನು ತರುವಂತೆ ಎ-2 ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಕಿರುಕುಳ ನೀಡಿ, ದಿನಾಂಕ:11/06/2022 ರಂದು ಸಾಕ್ಷಿ-1 ಹಾಗೂ ಅವರ ಇಬ್ಬರು ಮಕ್ಕಳನ್ನು ಎ-1 ಮತ್ತು ಎ-2 ಆರೋಪಿತರುಗಳು ಅವರ ಮನೆಯಿಂದ ಹೊರ ಹಾಕಿದ್ದು, ಆ ನಂತರ ಸಾಕ್ಷಿ-1 ರವರು ಸಾಕ್ಷಿ-2 ಮತ್ತು ಸಾಕ್ಷಿ-3 ರವರ ಮನೆಯಾದ ವಾಸ ನಂ.-197, ಫ್ಲಾಟ್ ನಂಬರ-103, ಫಾಲ್ಗುನ್ ರಿನ್ಯುಸನ್, 13ನೇ ಕ್ರಾಸ್, 7ನೇ ಮೈನ್, ದಾಸ್ ಕಾಂಪೌಂಡ್ ಮುಂಬಾಗ, ಜಯನಗರ 2ನೇ ಬ್ಲಾಕ್, ಬೆಂಗಳೂರು ನಗರಕ್ಕೆ ಬಂದು ವಾಸವಾಗಿದ್ದುಕೊಂಡಿರುವಾಗ, ದಿನಾಂಕ:10.07.2022 ರಂದು ಬೆಳಿಗ್ಗೆ ಸಮಯ ಸುಮಾರು 10-00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಎ-1 ಆರೋಪಿಯು ಸಾಕ್ಷಿ-2 ಮತ್ತು ಸಾಕ್ಷಿ-3 ರವರ ಮನೆಗೆ ಬಂದು ಸಾಕ್ಷಿ-1 & ಸಾಕ್ಷಿ-3 ರವರುಗಳು ಮನೆಯಲ್ಲಿ ಇರುವಾಗ, ಸಾಕ್ಷಿ-5 & ಸಾಕ್ಷಿ-6 ರವರ ಸಮ್ಮುಖದಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರೊಂದಿಗೆ ಜಗಳ ಮಾಡಿ, ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ನಿಂದಿಸಿ ಕಿರುಕುಳ ನೀಡಿರುವುದು ತನಿಖೆಯಲ್ಲಿನ ಸಾಕ್ಷಿ ಹಾಗೂ ಸಾಕ್ಷಾಧಾರಗಳಿಂದ ಸಾಬಿತಾಗಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕ್ರಮ ಸಂಖ್ಯೆ:12 ರಲ್ಲಿನ ಎ-1 ಮತ್ತು ಎ-2 ಆರೋಪಿತರ ವಿರುದ್ಧ ಕಲಂ 498(ಎ), 504 ಸಹಿತ 34 ಐಪಿಸಿ ಹಾಗೂ ಕಲಂ 3 & 4 ಡಿ.ಪಿ ಆಕ್ಟ್ ರೀತ್ಯ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯನ್ನು ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಂಡಿದೆ.”

A perusal at the complaint or the summary of the charge sheet would not indicate any offence against the mother-in-law, but would clearly indicate various offences or ingredient of offences against the husband. Hence, permitting further proceedings against the mother-in-law, finding no allegation against her, would run foul

of the judgment of the Apex Court in the case of **KAHKASHAN KAUSAR v. STATE OF BIHAR**¹, wherein it is held as follows:

"... .."

Issue Involved

"10. Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed?"

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that 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.

12. This Court in its judgment in Rajesh Sharma v. State of U.P.⁴, has observed:—

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to

¹ 2022 SCC OnLine SC 162

commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

13. Previously, in the landmark judgment of this court in *Arnesh Kumar v. State of Bihar*⁵, it was also observed:—

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

14. Further in *Preeti Gupta v. State of Jharkhand*⁶, it has also been observed:—

"32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should

not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

15. In Geeta Mehrotra v. State of UP^Z, it was observed:—

"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao v. L.H.V. Prasad* reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"12...There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes."

16. Recently, in *K. Subba Rao v. The State of Telangana*⁸, it was also observed that:—

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

17. The abovementioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general

omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.2019, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

19. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR. Respondent No. 1 i.e., the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.2017.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the Respondent wife. Allowing prosecution in the absence of clear allegations against the in-laws Appellants would simply result in an abuse of the process of law.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged."

In the light of the facts obtaining in the case at hand and the judgment of the Apex Court *supra*, permitting further proceedings against the mother-in law would become an abuse of the process of law, but the same does not go with the husband. The husband will have to come out clean in a full blown trial in view of serious allegations made against him.

W.P.No.19687 OF 2023 – Crime No.251 of 2023:

10. Facts succinctly stated are as follows:

After registration of the crime by the wife which becomes a crime in Crime No.22 of 2023, the husband registers a private complaint. The private complaint is registered on 21-02-2023 which is after registration of crime in Crime No.22 of 2023 which was on 24-01-2023. The allegation is against the wife and the alleged friend of the wife. The aforesaid complaint is referred for investigation under Section 156(3) of the Cr.P.C., It then becomes a crime in Crime No.251 of 2023. The offences alleged are attempt to murder, cheating, theft, preparation to commit an offence which is punishable beyond three years and Section 3 of the Black Magic Act. The registration of the crime in Crime No.251 of 2023 has led the wife and her friend before this Court in two separate writ petitions.

11. The learned senior counsel Sri C. V. Nagesh representing the petitioners in both these cases would vehemently contend that the very registration of the complaint by the husband is an abuse of the process of law. It is his contention that theft that allegedly took

place in 2020, is sought to be complained, after 3 years, in the year 2023. For the attempt to murder, there is not even a titter of ingredient. The provisions of the Act are without rhyme or reason -- alleged. He would seek quashment of entire proceedings, for it to be saved from law being abused.

12. Per contra, the learned counsel appearing for the complainant/husband would contend that he saw so many whatsapp chats between the wife and accused No.2, her friend in a conspiracy to kill the mother-in-law and the husband by practice of ***black magic***. It is, therefore, the provisions of the Black Magic Act are complained of. He would admit the fact that the theft has taken place in the year 2020. Since the wife and her friend have discussed about finishing of the husband and the mother-in-law, the offence under Section 307 of the IPC is appropriately laid. He would seek dismissal of the petitions.

13. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record *qua* the subject petitions.

14. To consider the submissions of the respective learned counsel it is necessary to notice the genesis of the problem. The genesis lies in the private complaint registered by the husband invoking Section 200 of the Cr.P.C., Certain paragraphs of the complaint in P.C.R.No.51647 of 2023 are germane to be noticed and they are extracted hereunder for the purpose of quick reference:

"... .."

5. The complainant was shocked in January 2020 when several gold and diamond jewelry viz., four bangles, 1 diamond set, 3 gold pendants and three thick bangles, belonging to complainant parents which were kept in the almirah in his house, went missing. At that point of time, complainant enquired with his parents regarding the whereabouts of the jewelries. However, none of them had any idea as to where it was and who had taken them. Complainant and his parents felt that their maid Mrs. Karpakka had stolen these articles, but when police investigated and interrogated maid it was found that it was not her and later, the complainant realized that it was accused Nos. 1 and 2 who had conspired together and hatched a plan to steal valuable articles and cash for their ulterior motives, which is detailed herein below. Photos of jewelry and a few invoices are herewith produced as Document No.7 and 8. CD (1) containing the photos of jewelry is herewith produced as Document No.9.

6. In the month of July 2021, the complainant was shocked to find out that his diamond studded ring, pendant and earring along with two gold bangles worth several lakh of rupees went missing from his almirah. At that point of time, since lockdown restrictions were imposed in lieu of the Covid-19

pandemic and since there were no visitors to complainant house, the complainant started suspecting that one of their family members was behind it.

7. The complainant state that he had a suspicion on accused No.1 and when complainant checked accused No.1's phone in the month of June 2022, complainant was shocked to find out that accused No.1 was having a love affair with the accused No.2 who is a resident of No.50, Ranoji Rao Road, Basavanagudi, Bangalore 560 004. The accused No.2 would constantly contact and chat with him through the messaging application called IMO.

8. The series of conversations which ran to about 4200 messages, for the period between April to June 2022, wherein accused No.1 had conspired with accused No.2 and had committed multiple acts of theft of money, jewelry, etc. from complainant house totally valuing and amounting to Rs.19 lakh (Rs.1 lakh of cash and Rs.18 lakhs worth of gold).

9. The complainant state that chats/conversations also revealed that accused used to frequently abuse complainant's mother Mrs. Hoornaz Banu and had stated and expressed that complainant's mother brings bad luck to accused No.1. The accused No.2 was involved in the practice of black magic and other evil practices. The Accused No.1 and 2 had also planned to murder complainant mother and that accused No.2 was guiding accused No.1 and instructing her with the use of black magic techniques and evil practices. It was only then complainant realized that accused no.1 was the one who had stolen the jewelries, money etc. for fulfilling such evil practices. There were also conversations regarding the expenses which would be involved and how accused No.1 would arrange the same. The accused No.1 had stolen money from complainant and handed it over to accused No.2 as 'supari amount' to meet the expenses involved in the use of black magic and other evil practices which accused No.1 had planned and attempted to murder complainant mother and such offences have been committed by the accused on various dates between 14-04-2022 to 4-6-2022.

10. Since complainant had purchased the phone for accused No.1, the complainant kept that phone with him and complainant also got this phone examined by a scientific forensic expert, who has confirmed the contents on the phone. Print out of the relevant extracts IMO chats is produced as **Document No.10**, DVD (2) containing the IMO chats recording is produced as **Document No.11**, and Copy of the Forensic Expert report dated 06-09-2022 is produced as **Document No.12**.

11. The complainant confronted the accused No.1 and initially she gave evasive answers and excuses and started making false and baseless allegations against complainant and his mother and also threatened that accused No.1 filed a false complaint against complainant and his mother, which she has also done recently. On 11-06-2022, accused No.1 voluntarily took children and left the marital home. During the telephone conversation with the complainant the accused has admitted about commission of the offence by her too which is recorded as audio recordings by the complainant. Also while chatting on Whatsapp with the complainant, the accused used her mother's mobile phone and also admitted her wrong doings. Print out of the transcripts of the voice recordings reflecting the admissions by the accused No.1 is produced as **Document No.13**, CD (3) containing the audio recordings is produced as **Document No.14** and the printouts of the whatsApp chats is produced as **Document No.15**.

12. The complainant was hoping that accused No.1 will change her ways but her conduct depicts that she wants to get rid of complainant and his family and elope with accused No.2. Since the accused No.1 was caught red-handed by the complainant, to set up a false claim, to exert pressure upon the complainant by filing false cases, and to ensure that the complainant cannot meet the children, whom he is very attached to, the accused No.1 has instituted false and baseless complaint and got a false FIR registered against him and his mother and had also filed a false petition before the Hon'ble Family Court, Bengaluru.

13. The accused No.1 has conspired and connived with the accused No.2 and in pursuance of the said conspiracy, the accused No.1 has stolen valuable articles

from the house of the complainant i.e., gold and silver jewelry and cash all worth about Rs.19 lakhs and the accused Nos. 1 and 2 have chatted in the form of thousand of messages on the messaging app IMO to conspire to murder the mother of the complainant with the use of black magic techniques and evil practices and the accused No.1 handed over the money and jewelry to accused No.2 as 'supari amount' to meet the expenses involved in the use of black magic and other evil practices and thereby attempted to murder the mother of the complainant and thereby the accused No.1 and 2 have committed the offences punishable under Sections 380, 411, 506, 307 r/w. 511 IPC, Section 34 IPC and Section 3 of the Karnataka Prevention and Eradication of Inhumane Evil Practices and Black Magic Act, 2017.

14. The aforesaid offences have been committed by the accused Nos. 1 and 2 i.e., conspiracy, theft and preparation and attempt to murder and mother of the complainant on various dates between 14-04-2022 to 4-06-2022.

15. The complainant filed a written complaint dated 13.02.2023 against the accused No.1 and 2 to the Police Inspector, Ashok Nagar Police Station, Bengaluru and also complaint dated 15-02-2023 to the Commissioner of Police, Bangalore. However, no action has been taken. Though they called for discussion, the police are not willing to register the FIR in spite of there being clear and clinching evidence against the accused as detailed supra. Copy of the complaint dated 13-02-2023 to the Police Inspector along with postal receipt and complaint dated 15-02-2023 to the Commissioner of Police are produced herewith as **Document Nos.16** and **17**. Copy of the Aadhar card of the complainant is produced herewith as **Document No.18**.

16. The complainant submits that the accused No.1 and her family are highly influential persons and have connections with the Police department and politicians. Even if FIR is registered, there would be no honest and proper investigation in the crime and the interest of the complainant will be sabotaged and justice will suffer. Hence, the complainant presents this private complaint under Section 200 Cr.P.C. with a prayer to

take cognizance and proceed in accordance with Section 200, 190 and 204 Cr.P.C.

17. The complainant has not filed any other complaint either before the Hon'ble Court or any other Court on the same cause of action against the accused which has been registered or being investigated.

*Wherefore, the complainant in the above case prays that this Hon'ble Court be pleased to pass an order, taking cognizance of the offences punishable under **Sections 380, 411, 506, 307 r/w. 511 IPC, Section 34 IPC and Section 3 of the Karnataka Prevention and Eradication of Inhumane Evil Practices and Black Magic Act, 2017** secure the presence of the accused and punish them in accordance with law, to meet the ends of justice."*

(Emphasis added)

At paragraph-7 it is the submission of the husband that he checked the mobile phone of the wife and comes to know a few facts. Series of conversations, according to the complaint, took place about theft and also using black magic techniques and evil practices to murder both the husband and the mother-in-law. It is the allegation that the wife had stolen money from the husband and handed it over to her friend as a 'supari' amount. It is his submission that those whatsapp chats have admittedly led to the registration of crime. Since they are very serious in nature, they should be investigated into. I decline to accept the said submission of the learned counsel appearing for the husband.

15. At the outset, I have no hesitation to hold that the husband has registered the crime, as a counter-blast to what the wife has registered in Crime No.22 of 2023, as the narration in the complaint of the husband *supra* is trying to connect the dots with regard to the theft of jewels and practice of black magic. The complaint itself narrates that the theft has happened in the year 2020 and also in the month of July 2021. The complaint is filed, as observed hereinabove, on 21-02-2023. The husband narrates he was shocked at the theft, that happened 3 years ago. It looks like the impact of shock has happened 3 years later. Whether whatsapp chats that the husband seeks to place reliance upon can be taken note of, to permit investigation into the crime for the aforesaid offences, is what is to be noticed. There are a few whatsapp chats that are appended to the statement of objections filed by the husband. There are four particular chats to support the allegation, according to the learned counsel appearing for the husband. They read as follows:

*"I have told mom n dad indirectly many times ya he scholds me
yeh sab we should not thnk nor do aaisa he tells ya*

06.10 p.m.

Hmmm 06.10 p.m.

I want to finish kaam ya but if I tel dad he won't agree oly ha"
06.10 p.m.

"Once saas goes I ll keep all the money ya 01.07 p.m.
Bas Kaam chacha agree n finish of 01.08 p.m."

"Yes ya once she goes everything will be in ur control
12.55 p.m.

He don't care ya!! Now it's ok Once kids start going school I ll
need money ya n if sas is dr she won't allow oly husband to give
12.56 p.m.

She should go soon ya aab 12.56 p.m.

Now she will ya 12.56 p.m.
Her time has come 12.56 p.m."

"Done ya 07.21 a.m.
U took kya 07.22 a.m.
N 2400 dollars 07.22 a.m.
Yes ya 07.22 a.m.
Just dollars kya 07.22 a.m.
N chiller hai ya Dubai ke n dollars also chiller 07.23 a.m.
Thk yai ya 07.23 a.m.
N India money 2k 07.23"

Section 307 of the IPC reads as follows:

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life], he may, if hurt is caused, be punished with death.”

Section 307 deals with attempt to murder. It directs that whoever does any act with such intention or knowledge and under such circumstances, if he by that act caused death, he would be guilty of murder. The crux of the matter is intention or knowledge to perform an act and if performed would eventually become a murder. Therefore, it is attempt to murder. The issue is that the husband and the mother-in-law were sought to be finished by practice of black magic. Therefore, Section 3 of the Black Magic Act is invoked. Section 3 of the Act reads as follows:

3. Prevention and eradication of inhuman evil practices and black magic.—(1) No person shall himself or through any other person commit, promote, propagate or practice or cause to promote, propagate or practice inhuman, evil practices and black magic specified in the schedule.

(2) From the date of commencement of this Act, Commission of any act of inhuman, evil practices and black magic and any advertisement, practice, propagation or promotion of inhuman, evil practices and black magic in violation of provision of this Act by any person by himself or through any other person shall constitute an offence under the provisions of this Act and the person guilty of such offence shall on conviction be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall

not be less than Five thousand rupees but which may extend to fifty thousand rupees:

Provided that, as a consequence of offence under this Act if death of the victim occurs, the offender, shall be deemed to have committed an offence of murder as defined in Section 300 of Indian penal code, 1860 (Act 45 of 1860) and shall be punishable under Section 302 of the said code or if such act has endangered life of the victim or has resulting in injury to any person, the offender shall be deemed to be guilty of having committed an offence of attempt to murder as defined under Section 307 of the Indian penal code, 1860 (Act 45 of 1860) and shall be punishable accordingly or if consequence of such offence, the victim commits suicide, then the offender shall be deemed to have abetted commission of suicide, as defined and punishable under Section 306 of Indian penal code, 1860 (Act 45 of 1860) and shall be punishable accordingly.

(3) Whoever abets the commission or attempt the commission of any act or offence punishable under Sub-section (2), shall be deemed to have committed that offence and shall on conviction be punished with the same punishment for such offences in Sub-section (2).

(4) Consent of the victim shall not be a defense under this section.

(5) The offence punishable under Sub-section (2), shall be cognizable and non-bailable."

(Emphasis supplied)

Section 3 makes it an offence on practice of black magic as found in the schedule. The schedule reads as follows:

"(1) Performing any inhuman, evil act and black magic in search of precious things, bounty and hidden treasure for similar reasons in the name of such as banamathi, Mata-Mantra, assaulting any person, parading naked or put a ban on his daily activities

or instigate advice or encourage committing of such inhuman acts.

- (2) ***To create an impression by declaring that a power inapprehensible by senses has influenced one's body or that a person has possessed such power thereby create fear in the minds of others or to threaten others of evil consequences for not following the advice of such person or deceive defraud and deter him.***
- (3) ***Under the pretext of expelling the ghost, assaulting by tying the person with rope or chain, beating by stick or whip to make the person drink foot wear soaked water, giving chilli smoke hanging a person to roof fixing with rope or by a hair or pluck his hair, causing pain by way of touching heated object to organs or body of a person, forcing a person to perform sexual act in the open, practice inhuman acts, putting urine or human excreta forcibly in the mouth of a person or practice any such acts.***
- (4) *By making the persons believe that a particular person practices banamathi, Mata-Mantra black magic or brings under the influence of ghost or diminishes the milking capacity of a cattle by mantra-tantra or similarly accusing a particular person that, he brings misfortune to others or is a cause for spread of diseases and thereby making the living of such person miserable, troublesome or difficult, to declare a person as saithan or incarnation of saithan.*
- (5) *To create a panic in the minds of public in general by way of invoking ghost or mantras or threaten to invoke ghost creating an impressing that there is ghostly or warth of power inapprehensible by senses causing physical injuries and preventing a person taking medical treatment, instead diverting him to practice inhuman evil and aghory acts or treatment threatening a person with a death or causing physical pains or causing financial loss by practicing or tend to practice black magic or inhuman act.*
- (6) *Claiming to perform surgery by fingers or claiming to change the sex of a foetus in womb of a woman.*

- (7) *To create an impression that special supernatural powers are present in himself, incarnation of another person or holy spirit or that the devotee was his wife, husband or paramour in the past birth thereby indulging into sexual activity with such person.*
- (8) *Persuading, propagating or facilitating rituals that involve self-inflicted injuries such as hanging from a hook: inserted into the body (sidi) or pulling a chariot by a hook inserted into the body;*
- (9) *Persuading, propagating or facilitating rituals involving harm inflicted on children in the name of curing them, such as throwing them on thorns or from heights;*
- (10) *Practicing evil practices against women by forcing isolation, prohibiting re-entry into the village or facilitating segregation of menstruating or postpartum women; and subjecting women to inhuman and humiliating practices such as parading them naked in the name of worship or otherwise, such as "betthale seve";*
- (11) *Forcing any person to carry on evil practices such as killing of an animal by biting its neck (gaavu), that cause harm to public health nuisance.*
- (12) *Facilitating any person or persons to roll over (urulu seve) on the leaves of left over food by other persons in any public or/and religious places, or similar practices that violate human dignity.*
- (13) *Coersing any person or persons to perform fire-walk at the time of jatras and Religious festivals, causing physical injury.*
- (14) *The practice of piercing from rods from one side of, jaw to another side of the jaw including the tounge i.e., "baibiga" practice.*
- (15) *Pelting of stones in the name of Banamathi, Mata-Mantra and mantra-tantra on the residential houses during night or day.*

(16) *Prohibiting and preventing a person from taking medical treatment in case of dog, snake or scorpion bite and instead of giving him treatment like mantra-tantra, ganda-dora or such other things."*

(Emphasis supplied)

The learned counsel appearing for the husband places heavy reliance upon clauses (1), (2) and (3) *supra*. The very schedule commences with the words '**Performing any inhuman, evil act and black magic**'. Therefore, there should be completion of an act, as it reads "performing". Clause (3) is **beating** and **whipping** to **expel** the **ghost from any human body**. The rest of the clause is self-explanatory. If the schedule is pitted against the facts obtaining in the case at hand, where from all these ingredients of the schedule spring for a complaint to be registered under the Act is understandable. There is no act performed, neither an attempt to perform any of the ingredients of the Black Magic Act. The Whatsapp chats are completely vague. Therefore, the husband has undoubtedly indulged in a proceeding, as a counterblast to the registration of the crime by the wife. The other offences alleged are

the ones punishable under Sections 380 and 511 of the IPC.

Sections 380 and 511 of the IPC read as follows:

"380. Theft in dwelling house, etc.-Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

.... ..

"511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.- Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

The complaint narrates that the husband was shocked to know of the alleged theft that had occurred 3 years ago by the wife. An act, 3 years ago, is said to have had an impact upon the husband on the date of registration of the crime. None of the ingredients as necessary under Section 511 of the IPC is also present in the case at hand. It is trite law that the learned Magistrate prior to referring

the matter for investigation on a complaint filed invoking Section 200 of the Cr.P.C. cannot so do mechanically. The order referring the matter for investigation should bear application of mind in order to nip, frivolous cases being filed, at its bud. A perusal at the order of reference would not indicate even a semblance of application of mind. A plain and simple marital discord is dressed with black magic, theft and attempt to murder. In the teeth of the aforesaid findings, if the proceedings against the petitioners in **Crime No.251* of 2023 are permitted to continue, it would become an abuse of the process of the law and result in patent injustice.

16. For the aforesaid reasons, the following:

ORDER

- (i) ***Criminal Petition No.9653 of 2023 is allowed in part*** and the proceedings in C.C.No.11622 of 2023 pending before the 37th Additional Chief Metropolitan Magistrate stand quashed *qua* accused No.2, mother-in-law only. The Criminal Petition insofar as the husband/accused No.1 is concerned, it is dismissed.

*Corrected vide Chamber order dated 28.08.2024

- (ii) **Writ Petition Nos.19687 of 2023 and 23864 of 2023 are allowed** and the registration of crime in Crime No.251 of 2023 stands quashed.

Consequently, pending applications if any, also stand disposed.

**Sd/-
(M. NAGAPRASANNA)
JUDGE**

bkp
CT:SS