GAHC010174392023

2025:GAU-AS:2654

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./808/2023

ABHISHEK SUREKA AND 3 ORS.
S/O JAGADISH PRASAD SUREKA
R/O J.K. KEDIA ROAD, WARD NO. 18, P.O., P.S. AND DIST. HOJAI, ASSAM, PIN-782435

2: SRI JAGADISH PRASAD SUREKA
S/O LATE BIRADUTT SUREKA
R/O J.K. KEDIA ROAD
WARD NO. 18
P.O.
P.S. AND DIST. HOJAI
ASSAM
PIN-782435

3: SMT. MANJU DEVI SUREKA
W/O JAGADISH PRASAD SUREKA
R/O J.K. KEDIA ROAD
WARD NO. 18
P.O.
P.S. AND DIST. HOJAI
ASSAM
PIN-782435

4: SMTI. DEWKI DEVI SUREKA
W/O LATE MANGAL CHAND SUREKA
R/O J.K. KEDIA ROAD
WARD NO. 18
P.O.
P.S. AND DIST. HOJAI
ASSAM
PIN-78243

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY ITS PP, ASSAM

2:SMTI. WAGISHA SUREKA
W/O ABHISHEK SUREKA

D/O SRI DAMODAR CHAMARIA

R/O GNB ROAD
TINSUKIA
P.O.
P.S. AND DIST. TINSUKIA
ASSAM
PIN-78612

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE, MR JITENDRA DAS,MR. SAILENDRA DEKA

Advocate for the Respondent : PP, ASSAM, MR G N SAHEWALLA (r-2),MR M SAHEWALLA (r-2),MS. S. TODI (r-2),MR H K SARMA (r-2),MS T J SAHEWALLA (r-2),MR. A HASAN (r-2),A ALI (r-2),MR. N HASAN (r-2)

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners	:	Mr. B. Dutta, Senior Advocate. Mr. S. Deka, Advocate.
For the Respondents	:	Mr. G.N. Sahewalla, Senior Advocate. Ms. S. Todi, Advocate.
Date of Hearing	:	11.02.2025.
Date of Judgment	:	13.03.2025.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Dutta, the learned senior counsel assisted by Mr. S. Deka, learned counsel appearing for the petitioners. Also heard Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. S. Todi, learned counsel for the respondents.

2. This is an application under Section 482 of the CrPC read with Section 401 of the said Code praying for quashing the *Charge Sheet* and the proceedings in respect of PRC Case No.946/2023 arising out of Tinsukia P.S. Case No.20/2021 pending in the court of Sub-Divisional Judicial Magistrate (S), Tinsukia.

3. On 03.02.2012, the Respondent No.2 Smti. Wagisha Sureka (hereinafter referred to as "the Respondent No.2" only) had married the petitioner Abishek Sureka. The Respondent No.2 claims that soon after marriage, she was mentally tortured by her husband, her parents-in-law and by Smti. Devki Debi Sureka.

4. The sister (not named in the FIR) of her husband as well as the aforementioned persons always used to put pressure upon her to divorce her husband. Her husband used to tell her repeatedly that she was not his choice and he did not want to continue his married life with her. The behaviour of the petitioners has made her life measurable. She felt mentally suffocated. She developed ailments, like- depression, high pressure, insomnia, thyroid disorder etc.

5. The Respondent No.2 was not allowed to meet her friends nor was she given any money to buy her basic needs. The petitioners never had food with her. They never liked the food prepared by the Respondent No.2. For that matter, she was often criticized.

6. The petitioners always tried to send her back to the house of her parents. On some occasions, while she was staying with her parents at Tinsukia, the petitioners never asked her to come back. In spite of that, the petitioners always took the Respondent No.2 to social functions, just to show that they were having a good relationship with her.

7. The father of the Respondent No.2 also tried to interfere. On such occasions, the petitioners always agreed with the father of the Respondent No.2.

8. On 24.12.2020, Mrs. Soni and Mrs. Poonam, the two sisters of her husband quarrelled with her and told her that her husband would never accept her as his wife.

That day at night, the sisters and the other family members celebrated Christmas but the Respondent No.2 was never invited. They allegedly threw abuses towards the parents and relatives of Respondent No.2, which she had heard with her own ears.

9. On 30.12.2020, the Respondent No.2 returned to Tinsukia and since 4th January, 2021, she has been living there.

10. The Respondent No.2 has alleged that in the night of 01.01.2021, she had received multiple voice calls made by Rupesh, the domestic servant working in the house of the petitioners, at Hojai. By the aforesaid voice notes, the said Rupesh proposed to have sex with her and also used vulgar languages.

11. Next day, she informed her father about the aforesaid facts. On 03.01.2021, her father informed her father-in-law about the aforesaid facts. While her father was talking to her father-in-law, the latter hung up the phone. Her father tried to call him back, but on multiple occasions her father-in-law did not pick up phone.

12. The Respondent No.2 has alleged that the present petitioners have conspired together to malign her character and also created a ground for obtaining divorce. She claims that the aforementioned voice notes were actually sent by the present petitioners because Rupesh was not an expert in handling mobile phones.

13. With the aforesaid allegations, the Respondent No.2 lodged the FIR on 4th January, 2021.

14. Police registered the case being Tinsukia P.S. case No.20/2021. On conclusion of investigation, police filed the *charge sheet* under Sections 498(A) of the Indian Penal Code read with Section 67 of the Information Technology Act against the present petitioners.

15. On 20.07.2023, the learned Sub-Divisional Judicial Magistrate (S), Tinsukia took cognizance of the offence under Section 498(A) of the Indian Penal Code read with Section 34 of the said Code and under Section 67 of the Information Technology Act,

2000 (I.T. Act, 2000) against all the petitioners.

16. The learned senior counsel Mr. Dutta has deliberated upon the provisions of law as laid down under Section 498(A) of the Indian Penal Code and under Section 67 of the I.T. Act, 2000. The learned senior counsel has submitted that Section 498(A) of the Indian Penal Code was inserted into the Code to prevent abuse of married women for want of dowry. According to Mr. Dutta, the legislative intent behind insertion of Section 498(A) must be respected. According to Mr. Dutta, the word 'cruelty' appearing in Section 498(A) of the Indian Penal Code, means harassment or torture of married women for want of dowry only. Mr. Dutta has submitted that the Respondent No.2 never alleged that the petitioners ever demanded dowry from her.

17. The learned counsel Mr. Dutta further submits that there are no materials in this case under Section 67 of the I.T. Act because in the FIR itself the Respondent No.2 has claimed that she has reason to believe that the present petitioners might have sent her those obscene materials. The learned counsel has pointed out that in the FIR itself, it is specifically alleged that Rupesh, the domestic servant, had sent those materials to her mobile phone. According to Mr. Dutta, the allegation brought against the present petitioners, so far as Section 67 of the I.T. Act is concerned, it is her own calculation or hypothesis.

18. *Per contra,* Mr. Sahewalla has submitted that the Respondent No.2 deserves to be given an opportunity to prove her case in the trial court. According to Mr. Sahewalla, this is not a fit case for exercising the power under Section 482 of the Code of Criminal Procedure.

19. In order to buttress his point, Mr. Sahewalla has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *Manju Ram Kalita* versus *State of Assam*, reported in *(2009) 13 SCC 330*.

20. The facts of *Manju Ram Kalita* (supra) are like this–

On 05.02.1992, Manju Ram Kalita married Minoti Das. On 10.03.1993, a son was

born to them. In spite of that, the couple did not maintain cordial relationship with each other. Minoti Das has alleged that she was mentally and physically tortured by Manju Ram Kalita. She left her matrimonial home and since 1993, she was living in the house of her parents. In the year 1997, Minoti Das came to know that on 02.02.1997, Manju Ram Kalita had again married another lady called Ranju Sarma. Therefore, Minoti Das lodged the FIR before police alleging the aforesaid facts.

21. The trial court convicted Manju Ram Kalita under Section 498(A) and 494 of the Indian Penal Code. He filed a revision petition before this Court and that was also dismissed.

22. Mr. Sahewalla relied upon paragraph 14 of *Manju Ram Kalita* (supra). Paragraph 14 is quoted as under:

> "**14.** In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (*b*) of the Explanation. The elements of cruelty so far as clause (*a*) is concerned, have been classified as follows:
>
> (*i*) any "wilful" conduct which is of such a nature as is likely to drive the woman to commit suicide; or
>
> (*ii*) any "wilful" conduct which is likely to cause grave injury to the woman; or
>
> (*iii*) any "wilful" act which is likely to cause danger to life, limb or health, whether physical or mental of the woman."

23. On the point of power of this Court under Section 482 of the Code of Criminal Procedure, Mr. Sahewalla has relied upon *Renu Kumari –versus- Sanjay Kumar & Ors.*, reported *(2008) 12 SCC 346*. Paragraph 9 of he said judgment is quoted as under:

> "**9.** "*8*. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*)

to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur* v. *State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases where inherent power can and should be

exercised to quash the proceedings:

(*i*) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana* v. *Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are

as follows : (SCC pp. 378-79, para 102)

> '(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (*2*) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (*4*) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (*6*) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
>
> (*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

11. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its

exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal* v. *H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.)* v. *State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi* v. *R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala* v. *O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj* v. *State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]"

The above position was again reiterated in *State of Karnataka* v. *M.*

Devendrappa [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] , *State of M.P.* v. *Awadh Kishore Gupta* [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and *State of Orissa* v. *Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50, paras 8-11."

24. I have given my anxious considerations to the submissions made by the learned counsel of both sides.

25. In paragraphs 20 and 21 of *Manju Ram Kalita* (supra), it is held as under:

"**20.** In *Girdhar Shankar Tawade* v. *State of Maharashtra* [(2002) 5 SCC 177 : 2002 SCC (Cri) 971 : AIR 2002 SC 2078] this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498-A IPC and there should be a case of *continuous* state of affairs of torture by one to another.

21. "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

26. In the FIR lodged by the Respondent No.2, she never alleged that the petitioners ever demanded dowry from her. She only claimed that her husband did not like her and his family members were putting pressure upon her for divorce.

27. This Court has sufficient reasons to agree with the petitioners that the word "cruelty" for the purpose of Section 498(A) of the Indian Penal Code is to be established in the context of Section 498(A), as it may be different from other statutory provisions. Mr. Dutta has rightly submitted that Section 498(A) of the Indian Penal Code was inserted in the Code with a specific legislative intent and the said

legislative intent must be respected by the courts of our country. In *Manju Ram Kalita* (supra), the Hon'ble Supreme Court has held that there was no evidence of cruelty on the part of the appellant with a view to drive her to commit suicide. Therefore, the Supreme Court acquitted the appellant from the charge of Section 498(A) of the IPC.

28. So far as the allegation under Section 67 of the I.T. Act is concerned, it is clearly alleged in the FIR that the obscene materials came from the mobile phone of Rupesh. The Respondent No.2 claimed that Rupesh was not an expert in handling a mobile phone. She suspected that the present petitioners had actually sent her those materials from the mobile phone of Rupesh. It may be stated that police did not file the *charge sheet* against Rupesh.

29. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of

the Code.

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

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

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

30. Quarrels between husband and wife or the demand of divorce by the husband or his relatives do not amount to cruelty within the meaning of Section 498(A) of the Indian Penal Code. Subjecting a married woman to cruelty for want of dowry was the reason for which our legislature has inserted Section 498(A) in the Indian Penal Code. In the case in hand, there is no allegation of demand of dowry. Moreover, the allegation under Section 67 of the I.T. Act, is admittedly, based on suspicion.

31. For the aforesaid reasons, this Court is of the opinion that this is a fit case for exercising power under Section 482 of the CrPC.

32. Accordingly, the criminal petition is allowed.

33. The *charge sheet* and the proceedings in respect of PRC Case No.946/2023 arising out of Tinsukia P.S. Case No.20/2021 pending in the court of Sub-Divisional Judicial Magistrate (S), Tinsukia, are quashed and set aside.

The Criminal Petition is accordingly disposed of.

JUDGE

Comparing Assistant