



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 427 OF 2023

‘Y’]Applicant

VERSUS

1. State Of Maharashtra]

2. XXXX]

Through Samata Nagar Police Station,]

Kandivali (East), Mumbai.] **....Respondent**

‘Y’, Applicant in-person.

Mr. Yogesh Nakhwa, APP, for the Respondent-State.

Mr. Sujit Sahoo a/w Ms. Reeta Sharma for the Respondent No.2

Ms. Shilpa Duthade, API, Samata Nagar Police Station, present.

WITH

WRIT PETITION NO. 2768 OF 2021

Prakash Hotchand Bhatia]

Age: 49 years, Occu: Business,]

Rat. 1801, Tower No.2,]

R/at. 1801, Tower No.2,]

Challenger CHS., Thakur Village,]

Kandivali – (E), Mumbai – 400101.] **....Petitioner**

Versus

1. The State of Maharashtra]

(Through Samta Nagar Police Station)]

2. ‘Y’]

....Respondents



Mr. Niranjan Mundargi a/w Ms. Keral Mehta a/w Adv. Kajal i/b Mr. Himanshu Nagarkar, for Petitioner.

Mr. Yogesh Nakhwa, APP, for Respondent No.1 – State.

‘Y’ Respondent No. 2 appeared in person.

Ms. Shilpa Duthade, API, Samata Nagar Police Station, present.

WITH

WRIT PETITION NO. 3779 OF 2022

Prakash Hotchand Bhatia	]	
Age: 49 years, Occu: Business,	]	
Rat. 1801, Tower No.2,	]	
Challenger CHS., Thakur Village,	]	
Kandivali – (E), Mumbai – 400101.	]	Petitioner

Versus

1. The State of Maharashtra	]	
(At the instance of Samta Nagar	]	
Police Station)	]	
 2. ‘Y’	]	Respondents

Mr. Niranjan Mundargi a/w Ms. Keral Mehta a/w Adv. Kajal i/b Mr. Himanshu Nagarkar, for Petitioner.

Mr. Yogesh Nakhwa, APP, for Respondent No.1 – State.

‘Y’ Respondent No. 2 appeared in person.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 27th FEBRUARY 2026.

PRONOUNCED ON : 3rd JULY 2026.

**JUDGMENT :-**

1) In the recent past, one notices a phenomenal increase in various kinds of proceedings which are incidental offshoots and/or originating from matrimonial proceedings. This trend is extremely disturbing. Parties, may be due to adversity faced, financial or otherwise or the unwelcome, undesired situations and circumstances in which they find themselves in, file and initiate proceedings under all available laws and before various forums, against each other and against their relatives, instead of filing a petition for divorce by mutual consent and amicably parting ways with dignity and mutual respect towards each other. In many such litigations, the latest visible addition to the so called armor of the parties, are children, who are used as a protective shield in a defense mechanism or at times as an unfortunate strategy for attack or to counter balance what they perceive as equity. When one considers these proceedings, and more particularly the allegations made therein, one is awakened to the sad reality that, the ancient and sacred institution of marriage, has weakened, deteriorated and degenerated over a period of time, due to a variety of reasons ranging from career prospects and advancements therein, financial aspects or aspirations or insecurities and/or other personal reasons. Many a times, the issue is of just simple incompatibility which aspect is either not acceptable as a reason due to societal reactions or in some cases genuinely not realized. Unrelated, inconsequential and trivial issues take center stage, overshadow family



needs and priorities and with passage of time and subsequent events snowball into humongous problems and issues which are not desired, contemplated or even anticipated and more importantly, on most of the occasions, self created. Once this situation is reached, the actions get exaggerated and reactions aggravated, often assuming serious proportions resulting in filing complaints comprising of serious charges, which on many a occasions are known to the parties to be false and/or exaggerated. Frivolous and vexatious cases are filed against the spouse and to further harass and pressurize the spouse immediate, near and dear ones and relatives are also roped in. Allegations fly thick and fast, and most of the times imaginary, false, unsupported and uncorroborated. At the end of the day, in most matrimonial and related/connected litigations, there is a collateral damage in the form of loss of health, peace, happiness and irreversibly damaged relations with near and dear ones. The most productive years of ones life are lost and adverse financial effects add to the misery and well being of the family as a whole, which by that time has disintegrated and degenerated. At the end, the only loser is the institution of marriage, family values, bonds and ultimately the social fabric of the society. The brunt of the long lasting adverse impact is borne and felt by the next generation. This is, unfortunately the scenario in matrimonial and related disputes. The parties get so involved and consumed by the litigation that, they loose sight of the fact that there is so much to smile and be happy about in a beautiful life which does not last forever.



2) By this Judgment, I propose to dispose three proceedings i.e. Criminal Application No. 427 of 2023, Criminal Writ Petition No. 2768 of 2021 and Criminal Writ Petition No. 3779 of 2022 as the said proceedings are filed by and are between the same parties who happen to be husband, wife and daughter/step daughter.

2.1) The Applicant in Criminal Application No. 427 of 2023 and Respondent No. 2 in Writ Petition No. 2768 of 2021 and Writ Petition No. 3779 of 2022 is one and the same person (name masked and hereinafter referred to as “Y”).

2.2) In Criminal Application No. 427 of 2023, the First Information Report (FIR) has been lodged by Respondent No. 2 (name masked and hereinafter referred to as “X”). “X” is the step-daughter of ‘Y’.

3) ‘Y’ in Criminal Application No. 427 of 2023 seeks quashing of FIR No.767 of 2021 registered on 11th November 2021 with the Samata Nagar Police Station, Kandivali, for the offences punishable under Section 354, 323, 504 and 506 of the Indian Penal Code (for short IPC), Sections 8 and 12 of the Protection of Children from Sexual Offences Act (for short POCSO Act) and Section 75 of the Juvenile Justice Act and also the charge-sheet filed therein bearing Special Case No.347 of 2020. The FIR is filed by Respondent No. 2 /‘X’.

4) The Petitioner in Writ Petition No. 2768 of 2021 filed under Articles 226 and 227 of the Constitution of India and Section 482 of the



Code of Criminal Procedure, 1973 (now 528 of BNSS) seeks quashing of FIR bearing No.434 of 2021 dated 24th May 2021 registered with Samata Nagar Police Station, Mumbai, for the offences punishable under Sections 270, 323 and 504 of the IPC. The Petitioner namely Mr. Prakash Bhatia is the husband of 'Y' and the biological father of 'X'. The said FIR has been filed by 'Y'.

5) The Petitioner, in Writ Petition No. 3779 of 2022 filed under Article 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (for short CrPC) seeks to quash C.R. No.1149 of 2022 registered with Samata Nagar Police Station for the offences punishable under Sections 377, 376(2)(n), 328, 324, 506 and 504 of the IPC, 1860. The Petition is also filed by Mr. Prakash Bhatia. The said FIR is filed by 'Y'.

6) This Court by an Order dated 4th March 2024, was pleased to admit, Criminal Application No.427 of 2023, issue Rule and the proceedings were stayed till the final disposal. The hearing of the Application was expedited.

7) By separate Orders both dated 4th March 2024, Rule was granted in Criminal Writ Petition No. 2768 of 2021 and Writ Petition No. 3779 of 2022. The rule notice, being issued, is served upon 'Y'.

8) Heard 'Y' Applicant in person, Mr. Yogesh Nakhwa, learned APP for the Respondent-State, Mr. Sujit Sahoo, learned Advocate appearing for 'X' in Criminal Application No. 427 of 2023. Heard, Mr. Niranjana



Mundargi for the Petitioner, Mr. Yogesh Nakhwa, learned APP for the Respondent-State and 'Y' in person in Criminal Writ Petition No. 2768 of 2021 and Criminal Writ Petition No. 3779 of 2022. Perused the entire records.

Factual matrix in Criminal Application No. 427 of 2023

9) In Criminal Application No. 427 of 2023, 'Y' seeks quashing of FIR No. 767 of 2021 filed with the Samata Nagar Police Station under Sections 354, 323, 504 and 506 of the IPC, Sections 8 and 12 of the POCSO Act and Section 75 of the Juvenile Justice Act and also of the chargesheet. Briefly stated, the allegations levelled by 'X' in FIR No. 767 of 2021 and the resultant chargesheet against 'Y' are as under:-

9.1) That, since the year 2017, 'Y' abused, mentally harassed and treated 'X' in a bad manner. That, 'Y' made 'X' do all the household work in exclusion of her own daughters.

9.2) That, in June 2018, Mr Prakash Bhatia/father of 'X' went on a business tour to China for a period of 15 days. That, during the said period, 'Y' called 'X' in her bedroom on three or four occasions and hugged her. That, while hugging her, 'Y' inappropriately touched 'X'. That, due to the said acts, 'X' was embarrassed, but did not complain.

9.3) That, 'X' at all times considered, 'Y' as her mother, but 'Y' never reciprocated. That, 'X' used to be ill-fed. That, the house maids stopped cooking food for 'X' and her father, therefore, the father of 'X' used to prepare the food. That, 'Y' used to throw away food made by the father



of 'X'. That, in the year 2019 when Savitridevi the step grandmother of 'X' and mother of 'Y' came to reside with the family for a period of six months, she troubled and harassed 'X'.

9.4) That, on one occasion, 'X' was locked up in a room and was not permitted to contact her father Mr. Prakash Bhatia. That, on the said day i.e. 22nd November 2019 her father was forced to execute a gift deed in favour of 'Y'.

9.5) That, in July, 2020, 'Y' forcefully evicted 'X' from her own room, removed all her cloths and articles from the room and kept them in the hall. That, in November, 2020, 'X' and her father were not permitted to enter the house and were kept out. That, they had to eventually take assistance of Police and fire brigade services to enable them to enter the house.

9.6) That, in April 2021, Mr. Prakash Bhatia and 'X' both tested COVID positive. 'Y' did not take care of 'X' and went to her mother's house. Mr. Prakash Bhatia took care of 'X'. That, 'Y' directed the househelp not to do any of the work pertaining to 'X'. That, 'X' had to do her own work, wash utensils, wash her cloths and clean her room. That, 'Y' used to read the Whatsapp messages of 'X' and used to threaten her that, she would spoil her name in her friend circle and not allow her to study any further.

9.7) That, if 'X' did not do the household work, 'Y' used to threaten to kill her father and sister. That, 'Y' had hidden all the documents of 'X' i.e. Aadhar Card, Passport, medical documents and birth certificate etc.



That, jewellery made for 'X' by her father was with the 'Y'. That, 'X' used to get scared of staying alone in the house without her father and therefore used to lock herself in the room. That, 'Y' also verbally abused the elder sister of 'X'.

9.8) That, on 13th August 2021, 'Y' verbally abused 'X', at which time the father of 'X' called the child helpline and made a complaint. Pursuant to the complaint, one Ms. Lalita Verma visited the residence for conducting an enquiry. At that time, 'X' allegedly informed her that, 'Y' had verbally and sexually abused her. At that time, Mr. Prakash Bhatia/father of 'X' for the first time became aware of the alleged sexual harassment committed by 'Y'. That, 'Y' assaulted 'X' and sprayed pepper spray on her face.

9.9) That, from the year 2017 till the date of filing the F.I.R, the 'Y' harassed and abused 'X', directed her to do the household work, refused to give her sufficient food. That, 'X' was not allowed to touch household articles/appliances of daily use such as the fridge, mixer, juicer etc. On the basis of these allegations FIR No. 767 of 2021 has been registered on 11th November 2021 in respect of an incident of June 2018.

9.10) Nearly after a month i.e on 10th December 2021, a supplementary statement was recorded, wherein 'X' made further allegations against 'Y'. That, in December 2018, when her father was on a business trip to China, 'Y' called 'X' in her room and pushed her on the bed. That, under the pretext of doing some examination, 'Y' removed her



clothes, kissed her and touched her inappropriately. That, 'X' was again sexually abused in April, 2019 and in the first week of December, 2019. That, she was threatened that, if she informed of the said acts to anybody else, 'Y' would defame 'X' in her friend circle. That, again in November and December 2020, 'Y' physically misbehaved with 'X' and threatened her that, she has already filed a case against her father, the grandfather and sister and if she told anybody about the alleged incident, a false rape case would be filed.

9.11) In the supplementary statement 'X' has stated that, her school timing were from 9:00 a.m. to 3:00 p.m. That, she used the school bus to go to school and left the house at about 8:15 a.m. and returned at 3:30 pm. That, three times a week, between 6:00 p.m. to 9:00 p.m. she used to have classes for the subject of Science, Mathematics and French. That, in the year 2018 and 2019 there were three to four house maids and that, some of the maids were full time maids staying at home. That, other maids used to come on part time basis. That, in the year 2020 house maid by the name of Sangeeta Sorenge was working on full time basis and used to reside at the residence.

9.12) On being inquired by the police, 'X' has specifically stated that, from the year 2018 and July 2019 both her step sisters were also staying in the house. That, there used to be quarrels between them. That, during the incident of December 2019, mother of 'Y' Smt. Savitridevi was residing with them. That, in respect of the other incident when nobody was



at home, 'Y' took advantage of the said fact and the alleged acts of sexual abuse were committed.

Submissions in Criminal Application No. 427 of 2023

10) 'Y' appearing party in person in Criminal Application No. 427 of 2023 submitted that:-

10.1) The FIR, as filed, does not make out any case for the offences as alleged. The FIR stems out of various criminal proceedings which have been filed and is an immediate reaction to the protective order dated 22nd October 2021 passed in the D.V. proceedings.

10.2) The statements of the NGO workers and the home visit report dated 13th August 2021, clearly indicates that 'X' had not made any allegations of any misconduct or act amounting to any offence under the POCSO Act to the NGO worker who had visited the residence after the complaint made by Mr. Prakash Bhatia.

10.3) The fact that Mr. Prakash Bhatia contends that he got knowledge of the act of sexual abuse when 'X' informed the NGO worker is, therefore, an afterthought and a completely false story.

10.4) The falsity of the allegations in the FIR is clear and writ large. It is alleged that 'Y' restrained/locked 'X' in the room and Mr. Prakash Bhatia was forced to execute the Gift Deed on 22nd November 2019. That, the said allegation is expressly false for the simple reason that, the investigation papers contain a letter received from the school of 'X' which indicates that on 22nd November 2019, 'X' was attending school. That the



malicious and dishonest intention of Mr. Prakash Bhatia in filing the said false FIR is clearly borne out.

10.5) There is material variance in the statements of 'X'. The FIR dated 11th November 2021, the supplementary statement dated 10th December 2021, and the statement of X" under Section 164 of the CrPC dated 2nd May 2022 are at material variance in respect of the incident of sexual abuse itself. A clear case of false implication is made out.

10.6) Even if the case of Mr. Prakash Bhatia is accepted that, he got knowledge of the alleged act of sexual abuse for the first time on 13th August 2021, the FIR came to be filed only in November 2021. That, the said delay is not explained. That, the alleged offences have been exaggerated and stated in the supplementary statement dated 10th December 2021, only to be omitted in the statement under Section 164 of CrPC. In the 164 statement, 'Y' has made different allegations relating to jewellery and personal identity documents etc.

10.7) Even the affidavit filed by the I.O. before the Hon'ble Supreme Court states that, no allegation of sexual abuse was made till November 2021 before any authority. That, the surrounding circumstances and the documents collected during the investigation prima facie indicate that the relationship between 'Y' and 'X' was cordial and, in fact, very good. That, the NGO workers i.e. independent third parties have not supported the allegations under the POCSO Act. The act of exaggerating and making false, baseless allegations is writ large on the face of the record.



10.8) The FIR has been filed as a counterblast, as Mr. Prakash Bhatia was unable to repay the amounts which were borrowed from 'Y' and through 'Y' from the banks. That, the FIR has been filed with malicious intent and personal vendetta.

11) Mr. Sujit Sahoo, learned Advocate appearing for the Respondent No. 2 in Criminal Application No. 427 of 2023 submitted that :-

11.1) Perusal of the FIR clearly makes out a prima facie case against Y". That, the offences as alleged under the POCSO Act are made out. The required ingredients are present and have been pleaded.

11.2) While exercising powers under Section 482 of the CrPC, this Court cannot evaluate the evidence or conduct a mini trial. That, in the supplementary statement and the statement recorded under Section 164 of the CrPC, 'X' has clearly mentioned and stated in detail the alleged acts of sexual abuse and the acts/conduct which prima facie amount to offences under the POCSO Act. That, on a reading of the FIR, a prima facie case is made out.

11.3) Considering the provisions of Sections 29 and 30 of the POCSO Act and the presumptions therein, this Court ought not to interfere with the criminal prosecution under Section 482 of the CrPC.

12) The learned APP in Criminal Application No. 427 of 2023 supported and adopted submissions made on behalf of Respondent No. 2.

**Factual matrix in Writ Petition No. 2768 of 2021**

13) In Writ Petition No. 2768 of 2021, Mr. Prakash Bhatia i.e. the Petitioner has sought quashing of FIR No. 434 of 2021 registered with the Samata Nagar Police Station under Sections 270, 323 and 504 of the IPC. The said FIR is filed by 'Y' against Mr. Prakash Bhatia. Briefly stated the allegations in the FIR are as under:-

13.1) That, from March 2021, corona virus had already spread in the Country. That, on 6th April 2021, 'Y' had taken vaccine Covishield and therefore, was suffering from slight fever. That, on 8th April 2021, at about 22:30 while 'Y' was resting in her room, the Petitioner sent their maid named Sangeeta and called for 'Y'. When 'Y', came out of the room, the Petitioner pushed 'Y', abused and assaulted her with fist and kick blows. Due to the said assault, 'Y' received injuries on her head, waist, hands and legs. That, the Petitioner and his elder daughter informed that they had tested COVID positive. That, the Petitioner forcefully caught hold of 'Y', pulled her near, removed his mask and exhaled on the face of 'Y'. That, while doing so, he said that, he was trying to spread the corona virus and make 'Y' COVID positive.

13.2) After the said incident, 'Y' called the Women Helpline asking for help. 'Y' then visited Samata Nagar Police Station, Mumbai and lodged a NC complaint dated 9th April 2021 for the offences punishable under Sections 323, 504 and 506 of the IPC. After filing the complaint, 'Y' returned home, packed her bags and along with her maid went to stay at



her mother's residence at Sector No.2, Charkop, Kandiwali (W). On 10th April 2021 'Y' sent an email to the Police Authorities complaining of the said incident and also of the fact that she was scared as there were valuable articles and jewellery in her room.

13.3) After going to her mother's place, 'Y' became symptomatic of corona virus on 15th April 2021 and on testing, was declared COVID positive on 17th April 2021. That, her mother, brother, brother's wife, nephew and her maid were all infected with the corona virus. In these background facts, 'Y' filed the present FIR alleging that, the Petitioner assaulted her, abused her and intentionally spread the Corona virus.

Submissions in Writ Petition No. 2768 of 2021

14) Mr. Niranjan Mundargi, learned Advocate appearing for the Petitioner in Criminal Writ Petition No. 2768 of 2021 submitted that :-

14.1) The present complaint is a false concoction and arises in the background of various criminal proceedings filed by 'Y'. That, the Petitioner has made a online complaint, wherein he has specifically stated that, 'Y' was trying to falsely implicate him.

14.2) The FIR is filed at a belated stage, is at a variance and does not corroborate with the N.C which is filed on 9th April 2021, which is first in point of time. That, the Petitioner was in fact wearing a mask and had taken all the possible precautions.



14.3) 'Y' being aware of the fact that the Petitioner and his daughter were COVID positive, ventured out of the room without wearing a mask.

That, her only intention was to create some issue or dispute.

14.4) 'Y' did not take precautionary measures nor follow the mandatory quarantine rules. That, 'Y' did not test herself till 16th April 2021 and kept visiting various places in spite of the corporation informing her.

14.5) That, the present complaint has been filed to put up a defence and escape the process of law. That, the facts, alleged prima facie fail to constitute the necessary ingredients of any offence for which the FIR dated 24th May 2021 is registered.

15) Respondent No. 2/'Y' appearing in person in Criminal Writ Petition No. 2768 of 2021 submits that:-

15.1) The perusal of the FIR would indicate that the offence as contended in the FIR is made out. That, the Petitioner was granted anticipatory bail in Anticipatory Bail Application No.1106 of 2020, in spite of offences 498A, 323, 504 read with 34 of the IPC and on several conditions imposed therein including that, the Petitioner shall not tamper with the prosecution witnesses including the informant in any way. That, the acts of the Petitioner are in direct conflict with the conditions of the order dated 7th December 2020.



15.2) That, spreading of contagious and dangerous disease cannot be termed as an offence which is private in nature. That, the same have a serious adverse impact on the society at large.

15.3) On 8th April 2021, 'Y' asked for the test reports and requested the Petitioner and the daughter to be quarantined. That, the Petitioner refused to give the test report and in fact forcefully came into the room where 'Y' was present and started beating and pushing her. That, the Petitioner being aware that, he was Covid positive, has committed an offence under Sections 270 of the IPC by forcefully, coming in close contact with 'Y' and removing his mask and blowing air from his mouth on the face of 'Y' and assaulting and touching her inappropriately. That, while doing the said act, the Petitioner specifically stated that "Even you should get the virus". This demonstrates the *mala fide* intentions of the Petitioner.

15.4) The learned APP in Criminal Writ Petition No. 2768 of 2021 supported and adopted the argument of 'Y'.

Factual matrix in Writ Petition No. 3779 of 2022

16) In Writ Petition No. 3779 of 2022, Mr. Prakash Bhatia i.e. the Petitioner has sought quashing of FIR No. 1149 of 2022 registered with the Samata Nagar Police Station under Section 377, 376(2)(n), 328, 324, 506 and 504 of the IPC. The said FIR is filed by 'Y' against Mr. Prakash Bhatia. Briefly stated the allegations in the FIR are as under :

16.1) 'Y' contends that, her daughter Shefali who was studying in Ryan International School at Kandivali was friendly with one Kritika



Bhatia. That, in the year 2012, 'Y' attended a parent teacher meeting at the school when she was introduced to the Petitioner i.e. Prakash Bhatia father of the Kritika Bhatia. That, friendly relations developed between 'Y' and the Petitioner.

16.2) That, in or around May 2012, the Petitioner requested 'Y' to accompany him for a drive, which after some reluctance 'Y' agreed. That, 'Y' and Petitioner went for a drive and visited the Golden Valley resort, Thane. That, they sat near the swimming pool for refreshments.

16.3) That, Petitioner allegedly spiked the coffee. That, after consuming the coffee, 'Y' felt giddy and did not remember what happened thereafter. After sometime, she woke up in the room of the resort and did not have her clothes on herself. On making inquires, the Petitioner informed 'Y', that as she felt giddy, the Petitioner brought her to the room. That, on making inquiries as to why she did not have her clothes, Petitioner after allegedly giving a subtle smile showed her on his mobile a video of the Petitioner and 'Y' involved in a physical act. That, on seeing the video, 'Y' was scared.

16.4) The Petitioner refused to delete the video. That, 'Y' did not file a police complaint as the Petitioner threatened to upload the video on a porn site and to show the same to the daughter and relatives of 'Y'. That, the Petitioner based on the said video blackmailed 'Y' and took her, to various resorts and committed acts of sexual intercourse with her against her will.



16.5) In the year 2014, the Petitioner proposed marriage to 'Y'. That when 'Y' refused, the Petitioner threatened her that he would upload the video on porn site and show it to her relatives. That, he would kill the daughters of 'Y'.

16.6) 'Y' allegedly being scared by the threats agreed to marry the Petitioner. On 28th November 2014, 'Y' and Petitioner got married. That, even after the marriage, the Petitioner treated 'Y' in an inhuman manner. That, the Petitioner maintained physical relations with 'Y' against her wishes. That, the Petitioner used to watch various videos on the porn sites and used to insist that 'Y' perform the said acts. Upon refusal, the Petitioner used to force 'Y' to have alcohol and would assault her. The Petitioner used to forcefully have unnatural and natural sex/physical relations with 'Y' against her wish and without her consent.

16.7) That, on 13th November 2021, 'Y' left the matrimonial home and went to her mother's house to stay at Charkop. That, from 2012 to 13th November 2021, the Petitioner maintained physical relations with 'Y' against her will and without her consent at the Golden Valley Resort at Thane, other resorts and also at the Petitioner's residence. On the aforesaid allegations, the present FIR has been filed.

Submissions in Writ Petition No. 3779 of 2022

17) Mr. Niranjan Mundargi, learned Advocate for the Petitioner in Criminal Writ Petition No. 3779 of 2022 submitted that :-



17.1) The FIR if read in its entirety and accepted as a whole, does not disclose any offence against the Petitioner. On reading the FIR along with the FIR No. 1201 of 2020 dated 4th October 2020, filed by 'Y' under Section 498A, 323, 504 read with 34 of IPC the *mala fide* and dishonest intentions of 'Y' are in fact clearly made out.

17.2) The FIR fails to prima facie demonstrate that, the required and essential ingredients to make out the offences as alleged are not present in the said FIR. That, the allegations are made without any basis or foundation, and made in order to falsely implicate the Petitioner with oblique motive and an intention to bring disrepute to the Petitioner and a lucrative settlement.

17.3) The parties were referred to mediation vide order dated 27th July 2022 and the present FIR i.e. 1149 of 2022 is filed immediately on 30th July 2022. The mala fide intentions are writ large and clearly made out.

17.4) 'Y' on 4th October, 2020 filed a complaint under Section 498A, 323, 504 and 34 of the IPC. That, in the said FIR there is no reference to the allegations made in the present FIR. That, the statement of the facts and allegations made in the FIR dated 4th October 2020 and the present FIR dated 30th July 2022 are at a material variance and in fact contrary. That, in the earlier criminal prosecutions, 'Y' has made none of the allegations which are sought to be belatedly made in the FIR dated 30th July 2022.



17.5) In the FIR dated 4th October 2020 filed under Section 498A, 323, 504 read with section 34 of the IPC, 'Y' has made a completely contrary claim. That, in the said FIR, 'Y' has contended that in August, 2012, the Petitioner had in fact proposed marriage to her and that during the said period, they were very good friends. 'Y' had specifically stated that, the Petitioner did not force 'Y' to marry him. That, 'Y' used to have conversation with the Petitioner on Whatsapp and other messenger services. That, she has made a categorical statement that, after a few days, the friendship between 'Y' and the Petitioner developed into love and therefore, 'Y' to agreed to marry with the Petitioner.

17.6) There is no explanation for the delay of 10 years in the said FIR. According to 'Y', the alleged incident is of the year May, 2012 and the FIR has been lodged in July 2022 i.e. after a period of more than ten years. There is no explanation provided by 'Y' in the FIR statement of the said delay. The delay is unexplained.

17.7) Even in FIR No.1201 of 2020 there is no reference to the acts as alleged in the present FIR.

17.8) 'Y' has filed a Domestic Violence Application bearing a case No.259/DV/2020 against the Petitioner, his father and his elder daughter. 'Y' has filed FIR bearing No.434 of 2021 dated 24th May 2021 registered with Samata Nagar Police Station under section 270, 323 and 504 of the IPC. That, in none of these FIR has 'Y' at any point made allegations against the Petitioner for offences as alleged in the present FIR.



17.9) Considering the number of FIR filed and registered at the instance of 'Y' it is extremely difficult to believe that the 'Y' was not able to register the FIR of the offences as alleged for a period of 10 years.

17.10) 'X' daughter of the Petitioner, has filed FIR bearing No.767 of 2021 registered with Samata Nagar Police Station under Section 8 and 12 of the POCSO Act, 2012 read with Sections 34, 323, 354, 504 and 506 of the IPC along with Section 75 of the Juvenile Justice Act, 2015. That, the present FIR is a counter blast to FIR No. 767 of 2021.

17.11) The Petitioner had on 10th July 2020 and 11th July 2020 made online complaint against 'Y', when she was threatening to involve the Petitioner in false domestic violence, attempt to rape case, forgery and other criminal matters if the Petitioner did not give an amount of Rs.15,00,000/-.

17.12) In the FIR filed interalia under Section 498A of the IPC, 'Y' has referred to various other unfounded allegations in respect of inheritance of property and other act of alleged cruelty, but there is no reference to the act as alleged in the present FIR. That, the entire prosecution is malicious and filed with ulterior motive and mala fide.

18) Respondent No. 2/'Y' appearing in person in Criminal Writ Petition No. 3779 of 2022 submits that :-

18.1) 'Y' was forced and coerced into the second marriage. During subsistence of marriage, Petitioner committed a series of fraudulent dealings, acts of domestic violence, criminal breach of trust and



misappropriation of monies.

18.2) In May 2012, the Petitioner took 'Y' to Golden Valley Resort and Petitioner surreptitiously spiked her coffee and committed the act of rape. That, the Petitioner recorded the said incident on his mobile phone and thereafter repeatedly used the recording to blackmail and threaten her. By threatening to upload the said video and tarnish her reputation, the Petitioner coerced 'Y' into marrying him under fear and duress.

18.3) The Petitioner subjected her to brutal sexual assault and physical violence. That, the Petitioner forcibly compelled her to engage in sexual relations against her will even when she was unwell and recovering from illness.

18.4) Petitioner repeatedly forced her to part with money for his personal expenses. In particular, in or about the year 2013, the Petitioner compelled 'Y' to purchase a mobile phone and a laptop for himself and his daughters and further coerced her into paying the education fees of his daughters.

18.5) The Petitioner has exhibited a consistent pattern of financial default and non-compliance. Various records, including income-tax assessment communications, notices regarding unpaid VAT/Sales Tax, and multiple demand letters for outstanding income-tax liabilities, reflect that the Petitioner failed to file statutory returns for the period from 2008 to 2016 and has been in arrears of government dues. That Petitioner has also received payment demands from several suppliers to whom he owes



outstanding amount.

18.6) The Petitioner, by using the aforesaid video as a tool of blackmail, coerced and compelled 'Y' to purchase a Toyota Etios car in or about the year 2012. That, the payment for the said vehicle was made by 'Y' from her Savings Account No. 03571140022875 maintained with HDFC Bank to the Petitioner's Account No. 123601502007 maintained with ICICI Bank.

18.7) 'Y' has spend an amount of approximately 80,00,000/- (Rupees Eighty Lakhs only) from her income and savings towards the aforesaid household and family expenses.

18.8) 'Y' on 10th January 2024, registered C.R. No. 0019 of 2024 with the Samta Nagar Police Station against Petitioner and other 6 accused persons for offences punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860. That, on 7th July 2023, the bank furnished to 'Y' a copy of a mandate dated 24th April 2019, purportedly bearing her signature, authorising the Petitioner, to operate Loan Account No. 089765110000295. That, as per the Handwriting Forensic Report dated 17th July 2023, her signature on the said mandate has been opined to be forged.

18.9) On 4th April 2024, opinion of the Forensic Document Examiner, is that Accused No. 5, daughter of the Petitioner, forged the signature of 'Y' on the mandate dated 24th April 2019. That, the Petitioner has wrongfully taken approximately 2,00,00,000/- (Rupees Two Crore only) from her and



has further misused approximately 4,50,00,000/- (Rupees Four Crore Fifty Lakhs only) from her proprietorship concern Shilpi Art, while having sole and exclusive access to the Current Account and Loan Account of the said concern.

18.10) The Petitioner also filed a false case under the POCSO Act using his minor daughter and forcibly removed her from her own house in which she holds a 50% share. That, 'X' filed the said false POCSO case to coerce her into giving an apology letter by threatening to make her videos and photographs public.

18.11) The contents of the FIR, read as a whole, clearly disclose the commission of cognizable offences punishable under Sections 376(2)(n), 377, 328, 324, 504 and 506 of the Indian Penal Code. The allegations are specific, detailed and supported by material collected during investigation. Therefore, a strong prima facie case exists warranting a full-fledged trial.

18.12) It is well settled that, quashing of FIR in serious sexual offences, particularly those involving repeated rape, unnatural offences, administration of intoxicants and criminal intimidation is an exception and not the rule. That, unless the FIR on the face of it is inherently absurd, patently improbable or legally untenable, the criminal proceedings ought not to be stifled at the threshold. In the present matter, none of these conditions are satisfied.

19) The learned APP for the Respondent-State in Criminal Writ Petition No. 3779 of 2022 supported and adopted the submission made by 'Y'.



20) Before, I proceed to consider the case on merits and to ascertain whether the application/petitions make out a case for exercising the powers and the jurisdiction vested in this Court under section 482 of the CrPC (now 528 of BNSS), it will be useful to refer to some of the pronouncements of the Hon'ble Supreme Court and other/this court enumerating the limits ambit and scope of the powers of this Court under section 482 of the CrPC and also under Sections 29 and 30 of the POCSO Act.

20.1) The Hon'ble Supreme Court in the case of *R.P. Kapur v. State of Punjab*, reported in 1960 SCC OnLine SC 21 has observed that :-

"6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first



information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

20.2) The Hon'ble Supreme Court in the case of *State of Karnataka v.*

L. Muniswamy reported in (1977) 2 SCC 699 has observed that:-

“7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution,



the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

20.3) The Hon’ble Supreme Court in the case of *State of Haryana and Ors. Vs. Bhajan Lal and Ors.* reported in 1992 Supp (1) SCC 335, has observed that :-

“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 channelized 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.."

20.4) The Hon'ble Supreme Court in the case of *Shaileshbhai Ranchhodbhai Patel Vs. State of Gujarat* reported in 2024 SCC OnLine SC 5569 has observed that :-

*"7. The question of law involved in these two appeals as to whether quashing of the FIR should have been refused for no other reason than that the investigating officer has filed the charge-sheet is no longer res integra. Decisions of this Court to such effect are legion. We may profitably refer to the decisions of this Court in *Ruchi Majoo v. Sanjeev Majoo*³, *Anand Kumar Mohatta v. State (Govt. of NCT of Delhi) Home Department*⁴ and *Abhishek v. State of Madhya Pradesh*⁵.*

8. On the authority of the aforesaid decisions, law seems to be well-settled that the High Court under Section 482, Cr. P.C. retains the power to quash an FIR, even after charge-sheet under



Section 173(2) thereof is filed, provided a satisfaction is reached, inter alia, that either the FIR and the charge-sheet read together, even accepted as true and correct without rebuttal, does not disclose commission of any offence or that continuation of proceedings arising out of such an FIR would in fact be an abuse of the process of law as well as of the Court given the peculiar circumstances of each particular case.”

20.5) The Hon’ble Supreme Court in the case of *Mamta Shailesh Chandra Vs. State of Uttarakhand And Ors.* reported in (2024) 19 SCC 568 has observed that :-

“2.if the charge-sheet had been filed, the court could still examine if offences alleged to have been committed were prima facie made out or not on the basis of the FIR, charge-sheet and other documents.”

20.6) The Hon’ble Supreme Court in the case of *Mahmood Ali Vs. State of U.P.* reported in (2023) 15 SCC 488 after reiterating the parameters as laid down in the case of *State of Haryana Vs. Bhajan Lal (supra)*, in paragraph 11 has observed that:-

“11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the



FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

20.7) The Hon’ble Supreme Court, after once again referring to and throwing the parameters laid down in the case of *Bhajan Lal* (supra), and while specifically dealing with the issue of malicious and vexatious proceedings/prosecution in the case of *Mohammad Wajid and Anr. Vs. State of Uttar Pradesh and Ors.* in Criminal Appeal No. 2340 of 2023, has observed as follows:-

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more



closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

20.8) On whether the material relied upon by the accused should be considered when deciding an application seeking quashing, the Hon’ble Supreme Court has observed, in the case of *Pradeep Kumar Kesarwani v. State of U.P.*, reported in 2025 SCC OnLine SC 1947, in Paragraph No. 20, as under:-

“20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.PC.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?



(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

20.9) In the following Judgment, the Hon’ble Supreme Court has observed that, while exercising jurisdiction under Section 482 of the CrPC, it is not permissible to conduct a mini trial or examine whether a statement of a witness is trustworthy or not. The trustworthiness of a witness can be examined only at trial. The stage of quashing under Section 482 of the CrPC is not the stage where the prosecution/investigating agency is called upon or required to prove the charges. What is required to be considered is whether a prima facie case is made out and whether the material collected during the investigation warrants that the accused be tried. The power under Section 482 is to be exercised only when the Court finds that, taking the case at its face value, no case is at all made out. The Court ought not to



go into the correctness or otherwise of the material placed by the prosecution. The Hon'ble Supreme Court, in the case of *Manik B v Kadapala Sreyes Reddy*, reported in 2023 SCC OnLine SC 2540, has observed as follows:-

“4. The least we can say is that the High Court in the impugned order, while exercising jurisdiction under Section 482 Cr. P.C., has almost conducted a mini trial and quashed the proceedings.

6. Whether the testimony of the witnesses is trustworthy or not has to be found out from the examination-in-chief and the cross-examination of the witnesses when they stand in the box at the stage of such trial.

7. Such an exercise, in our considered view, is not permissible while exercising the jurisdiction under Section 482 Cr. P.C.

8. The scope of interference, while quashing the proceedings under Section 482 Cr. P.C. and that too for a serious offence like Section 302 of Penal Code, 1860 is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all.

9. At the stage of deciding an application under Section 482 Cr. P.C., it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the chargesheet. The High Court by the impugned order has done exactly the same.”

20.10) The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh and Ors.* reported in (2023) 18 SCC 399 has observed that :-

“6. From the impugned common judgment and order [Aryan Singh v. CBI, 2022 SCC OnLine P&H 4158] passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the



learned trial court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.

20.11) The Hon'ble Supreme Court in the case of *Kailash Chandra Agarwal vs. State of U.P.* reported in (2014) 16 SCC 551 has observed that:-

"9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of the court's process, quashing jurisdiction can be exercised. ..."

20.12) This Court in the case of *Amol Bhagwan Nehul Vs. The State of Maharashtra and Anr. in Criminal Writ Petition No.3181 of 2023* has observed that:-

"8. The facts in the present case are quite distinct from the position of law as Mr. Suryavanshi has tried to depict. The Complainant alleges specific instances where the Petitioner has forcibly and without her consent established sexual relationship with her. She contends specific instances of her rejection of advances by the Petitioner. We are of the view that, the allegations in the F.I.R. prima-facie constitute the commission of the alleged offense. The defense of the Petitioner cannot be tested at this stage.

*9. In a series of precedents of the Apex Court, it has been clearly held that the High Court cannot hold a mini-trial in its extra-ordinary writ jurisdiction. The Hon'ble Supreme Court in the case of *Priyanka Jaiswal vs. The State of Jharkhand and Others in Criminal Appeal No. 2344 of 2024* dated 30th April 2024 (neutral citation 2024 INSC 357), while dealing with the similar issue, has*



also held as follows :

“13.This Court in catena of judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the Court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial, nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside.....”

20.13) The Hon’ble Supreme Court in the case of *Thulia Kali Vs. The State of Tamil Nadu* reported in (1972) 3 SCC 393 has observed that :-

“12First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

20.14) In the case of ‘X’ Vs. State NCT of Delhi & ‘Y’ (CRL.M.C.3124/2022 & CRL.M.A. 13185/2022 has observed that:-



“17. A perusal of the same reveals that the victim has narrated specific incidents of sexual abuse, the manner in which it was committed and the places, time and dates of such abuses. The same are not being reproduced in this order considering the sensitive contents of same. Keeping in mind the above and the observation of the child counsellor and the conclusion of the investigation culminating into filing of the chargesheet, this Court is not persuaded to reach a conclusion that the allegations leveled are absurd, highly improbable that such incident could not have happened so as to direct quashing of the FIR. While dealing with such a case, the Court remains conscious of the fact that child in this case is a minor who has given statement under Section 164 CrPC before the Magistrate. A statement under Section 164 CrPC is recorded by the concerned Magistrate after satisfying himself that the victim child is capable of giving statement and understanding the statement he is making before the Magistrate. This Court while exercising its extra ordinary powers under Section 482 CrPC cannot hold a trial, appreciate evidence or decide that the statements given by the child to the police, to the Magistrate, and to the counselor, he was taken to, were tutored, false or motivated. This Court remains conscious of the fact that such cases cannot be treated as cases of matrimonial discord but note that the child who is victim in this case has his own individual constitutional right to get justice in case he has been sexually abused. To deny the child victim the right to get such justice only because one of the parties involved happens to be his real father and his father and mother have matrimonial discord will be highly unfair.

18. The truthfulness of the statement of the victim will become clear only during the trial of the case after the testimonies of the child and other witnesses are recorded and appreciated on the touchstone of cross-examination. Holding otherwise will amount to throttling the judicial proceedings and denying opportunity to get justice to the victim child.

19. Needless to say, the applicant/accused will have opportunity to cross-examine the witnesses including the victim, lead his own evidence and advance arguments before concerned Court. This Court, therefore, is of the opinion that the present case is not covered by the cases relied upon. The



judgment of Bhajan Lal (Supra) is to be applied in the rarest of rare case, which cannot be said about the present case. As regards the reliance being placed upon judgment of N. Chandramohan (supra), the victim herself in the said case had completely and categorically denied all the allegations against her father, which is not there in the present case. As for the other judgments placed on record, this Court is of the opinion that the case at hand is not covered by those judgments as this Court is not satisfied that the allegations in the FIR at this stage can be held to be false or vindictive.”

20.15) The Hon’ble Supreme Court in the case of *Just Rights for Children Alliance v. S. Harish*, reported in 2024 SCC OnLine SC 2611 has observed that:-

“c. Whether the Presumption under Section 30 of the POCSO can be resorted to in a Quashing Proceeding?

180. *The last aspect which remains to be examined is whether the said statutory presumption of culpable mental state provided in Section 30 of the POCSO can be resorted to in a quashing proceeding by the High Courts in exercise of their inherent powers under Section 482 of the Cr. P.C. (corresponding Section 530 of the Bhartiya Nagrik Suraksha Sanhita, 2023, for short, the “BNSS”). In other words, at what stage can the aforesaid said statutory presumption be invoked at. Before proceeding with the analysis of the said aspect, it would be appropriate to refer to a few decisions of this Court on this issue.*

181. *In State of M.P. v. Harsh Gupta, (1998) 8 SCC 630, this Court held that the statutory presumption contained in Section 69 of the Indian Forest Act, 1927 could not have been ignored by the High Court in deciding the quashing petition under Section 482 of the Cr. P.C. The relevant observations read as under:—*

“3. It is rather surprising that at a stage when the only question to be considered was whether the complaint and its accompaniments disclosed any or all of the offences alleged against the respondent, the learned Judge not only went into a detailed discussion about his defence but recorded a conclusive finding that he was not guilty of the offences alleged against him. More surprising is that the learned Judge ignored the provisions of Section 69 of the Act which



expressly raises a statutory presumption against a person arraigned that the forest produce recovered from him was a property of the Government, until the contrary is proved; and needless to say, the question of proof of the contrary can be answered after evidence is led.

4. For the foregoing discussion, we allow this appeal, set aside the impugned judgment and direct the Magistrate to proceed with the case in accordance with law, without in any way being influenced by any of the observations made by the High Court in the impugned order.”

(Emphasis supplied)

182. This Court in *Prakash Nath Khanna v. CIT*, (2004) 9 SCC 686 examined the scope of Section 278E of the Act, 1961. It held that where there is a statutory presumption as regards the existence of a culpable mental state on the part of the accused in respect of any offence alleged, any defence in respect of the absence of such mental state can only be pleaded in the trial. It further held that in such scenario, it will not be open for the High Court to delve into the aspect of the absence of such mental state in a quashing proceeding. The relevant observations read as under:—

“23. There is a statutory presumption prescribed in Section 278-E. The court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. Therefore, the factual aspects highlighted by the appellants were rightly not dealt with by the High Court. This is a matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial.”

(Emphasis supplied)

183. In another decision of this Court in *R. Kalyani v. Janak C. Mehta*, (2009) 1 SCC 516 although the issue therein did not pertain to the applicability of any statutory presumption, yet the observations made therein are significant. This Court held that the High Court in a quashing petition in exercise of its inherent jurisdiction cannot go into the aspect of either the existence or absence of any mens rea or actus reus for a particular offence to pass an order in favour of the accused. The relevant observations read as under:—

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent



jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

(Emphasis supplied)

184. *In a recent decision of this Court in Rathis Babu Unnikrishnan v. The State (Govt. of NCT of Delhi), 2022 INSC 480 it was held that when there is a statutory presumption, it would not be judicious of the quashing court to carry out a detailed enquiry on the facts alleged before first permitting the trial court to evaluate the evidence. It further observed that where a accused moves the court for quashing even before the commencement of trial, the High Courts in such cases should be slow and circumspect in prematurely extinguishing by discarding the legal presumption all together. The relevant observation reads as under:—*

“11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint.

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13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without



first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

XXXXXXXXXX

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

(Emphasis supplied)

185. From the above exposition of law, it is clear that there is no bar for the High Court to invoke the statutory presumption at the stage of deciding the quashing petition in respect to any offence to which such a presumption is applicable. Rather, any failure to give due weightage to the same, may result in dire consequences such as premature quashing of the criminal proceeding or allowing the accused to completely bypass the statutory presumption which otherwise would have been applicable in the trial. In light of our earlier discussion and without again referring to a plethora of decisions in this regard, it is clear how the statutory presumption plays a vital role when it comes to offences such as those under the POCSO.

186. This Court in Attorney General (supra) specifically held



that considering the objects of POCSO, its provisions, more particularly, pertaining to sexual assault etc should be construed viz-a-viz the other provisions of the Act more meaningful and effective. Any selective reference to a particular provision in complete ignorance of the other provision would result in a mutilation of the entire scheme and purport of the legislation and thereby defeat the purpose with which it was enacted. The High Courts as a matter of choice should not shy away from referring to the statutory presumption that has been incorporated in the Act, whilst deciding a quashing petition. The High Courts must not deal with a particular offence under any enactment devoid or in disregard of the rest of the statutory framework, it must recognize and refer to the legislation in toto.

187. Otherwise, it would give an undue advantage to an accused by allowing him to mischievously prefer a quashing petition before the trial commences and completely bypass the statutory presumption provided by the legislature and walk right away from the criminal proceedings, thereby setting the entire legislation at naught. It is imperative for the courts to discourage any such attempts on part of the accused to short circuit the statutory provisions and procedure laid in a particular Act and evade trial entirely. In such situations, the statutory presumption becomes all the more important to effectively ensure that criminal process is not manipulated by any devious accused.

188. As has been held in Prakash Nath Khanna (supra) and Rathis Babu Unnikrishnan (supra), any defence of the accused for the purpose of rebutting the said statutory presumption should ordinarily be left to the trial court to be looked into at least when it comes to quashing petitions. Though, in certain exceptional circumstances, the High Court may entertain such defence to quash the criminal proceedings where it appears from the facts itself that the allegations themselves are completely false and bogus and by no stretch of imagination said to be established. But in doing so, the High Court must be slow and circumspect & must exercise some restraint. The statutory presumption may be ignored only where no foundational facts have been established from the material on record.

189. Once the foundational facts are prima facie established from the materials on record, it would be improper for the High Court in a quashing petition to conduct an intricate evidentiary inquiry into the facts and ascertain whether the requisite mental elements are present or not. All these aspects should be left to be decided by the trial court which is the appropriate forum for



the evaluation of the same, especially where the statutory presumption has been attracted prima facie from the material on record.

190. When the High Court quashes any criminal proceedings without considering the legal effect of the statutory presumption, it effectively scuttles the process of trial and thereby denies the parties the opportunity to adduce appropriate evidence and the right to a fair trial. This would not only defeat the very case of the prosecution but would also thwart the very object of a particular legislation and thereby undermine the public confidence in the criminal justice system.”

20.16) The Hon’ble Supreme Court in the case of *Surendra Khawse Vs. State of Madhya Pradesh* reported in AIR 2025 SC (Criminal) 1362 has observed that :-

“13. As apparent from the record, the Appellant-accused and the complainant had been colleagues for the past 5 years and it is somewhere during this time that their relationship progressed. We notice once against that the Appellant-accused had initiated legal process/administrative processes against the complainant much prior to the subject F.I.R. being lodged. These included a show-cause notice issued by the employer regarding her continued acrimonious behaviour against the Appellant-accuse, with the ultimatum that should she not respond to the notice with the requisite clarification, she would be relieved of her employment. It is only thereafter that the subject FIR was lodged. Further, the same was lodged four months after the alleged incident of forced sexual intercourse with the complainant. If the discription of the offence is taken at face value, right at the first instance, the complainant was not willing and was persuaded to engage in relation on the assurance of eventual marriage between the parties. When she enquired as to when the same would take place, a few days later, allegedly the Appellant-accused refused and asked her to marry someone else. That would be the first occasion when, having realized that she had been taken advantage of the complainant should have taken the



requisite action. Even if that was not done so, the fact that the subject FIR was only lodged after the issuance of show-cause notice, which obviously has large real-world implications insofar as the complainant is concerned, leaves open a gaping possibility that the same was lodged as an afterthought and was a vehicle for vengeance for the impending consequences described above.”

20.17) The Hon’ble Supreme Court in the case of *Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and Ors. in Criminal Appeal No.255 of 2019* has observed that :-

“5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are Sonu Gupta v. Deepak Gupta and Ors. 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. ”

20.18) The Hon’ble Supreme Court in the case *Abhishek Singh v. Ajay Kumar*, reported in *2025 SCC OnLine SC 1313* has observed that :-

“9. The scope of the Court's power to quash and set aside proceedings is well-settled to warrant any restatement. While the arguments advanced have the potential to raise many issues for consideration, we must first satisfy ourselves as to the propriety of the exercise of such power by the High Court. The task of the High



Court, when called upon to adjudicate an application seeking to quash the proceedings, is to see whether, prima facie, an offence is made out or not. It is not to examine whether the charges may hold up in the Court. In doing so, the area of action is circumscribed. In Rajeev Kourav v. Baisahab⁴, it was held:

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.””

21) The main thrust of the arguments advanced on behalf of both ‘Y’ and Mr. Prakash Bhatia in their respective application and petitions is that, the criminal prosecutions under challenge are malicious, manifestly attended with malafides, instituted with dishonest intentions and ulterior motives for wreaking vengeance and with a view to spite the other spouse due to the personal grudge. It is the contention of both ‘Y’ and Mr. Prakash Bhatia that, the criminal prosecutions under challenge are off shoots of the matrimonial proceedings and financial issues which exists between ‘Y’ and the Petitioner. It is also contended by both the parties and again as per their convenience, that this Court while exercising the power under Section 482 of CrPC (now 528 of BNSS) shall not evaluate the evidence nor can it conduct a mini trial. The law is well settled that a “mini trial” ought not to



be conducted. This Court is well aware and conscious of the said limits and restraints while exercising powers under Section 482 of CrPC. It is also settled law that, the inherent powers under Section 482 of CrPC are vast and ought to be exercised only when the twin conditions stated in Section 482 are satisfied i.e. to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. It also settled law that, when the contention is raised or an argument advanced that, proceedings are frivolous, vexatious, or manifestly instituted with ulterior motives for taking revenge or with vengeance, then in such circumstances, the Court owes a duty to look into the FIR, allegations and attending circumstances with due care and caution while considering an application for quashing. In frivolous and vexatious proceedings, the Court has a duty to look into other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read between the lines. The Court is empowered to take into account the overall circumstances leading to the initiation and registration of the criminal prosecution as well as the material collected during the course of investigation.

22) The parties to the present proceedings have a long and chequered history of litigation and disputes. Considering the arguments advanced, it is necessary to consider and appreciate the entire factual background of the matter. It is therefore necessary to consider alongwith the aforesaid FIR's certain other attending circumstances, events and



complaints filed by the parties which are relevant to and will be of assistance to this Court in deciding whether a case has been made out by the Applicant/Petitioner to exercise in their favour the inherent powers of this Court under section 482 of the CrPC. The overall background of the litigation and disputes is as under:-

22.1) On 28th November 2014, 'Y' and Mr Prakash Bhatia i.e father of 'X' got married. It was the second marriage for both 'Y' and Mr Prakash Bhatia. From the first marriage, each of them have two daughters.

22.2) On 22nd November 2019, Mr Prakash Bhatia executed a registered gift deed, thereby transferring a 50% share i.e his right, title, and interest in respect of Flat No. 1801, Tower No.2, Challengers CHSL, Thakur Village, Behind Thakur Cinema, Kandivali (East) in favour of 'Y'. It is the contention of Mr. Prakash Bhatia that, this was allegedly got done by locking 'X' i.e. his daughter in a room and forcing him to execute the registered gift deed in favour of 'Y'.

22.3) After May 2020, matrimonial disputes arose between 'Y' and Mr Prakash Bhatia. In or around August 2020, Mr Prakash Bhatia filed Marriage Petition No. 875 of 2020 seeking divorce from 'Y'.

22.4) On 5th September 2020, 'Y' filed a complaint with the Samta Nagar Police Station, Kandivali (E) complaining of physical, mental, financial and emotional abuse. On 4th October 2020, 'Y' registered a FIR No. 1201 of 2020 with the Samta Nagar Police Station under sections 498 A, 323, 504 and 34 of the IPC against Mr Prakash Bhatia, his father and his



elder daughter.

22.5) On 16th December 2020, 'Y' preferred a Domestic Violence Application before the learned JMFC Court at Borivali bearing Case No. 259/DV/2020 against Mr Prakash Bhatia, his father and his elder daughter.

22.6) On 7th January 2021, a Criminal Writ Petition No. 909 of 2021, was filed under section 482 of the CrPC, seeking quashing of FIR No. 1201 of 2020 registered under sections 498 A, 323, 504 and 34 of the IPC.

22.7) On 12th January 2021, Mr Prakash Bhatia filed a Civil Suit being Suit No (L) 973 of 2021 before this Court seeking to challenge the execution of the registered gift deed dated 22nd November 2019. On 18th January 2021, by way of an Interim Order, this Court granting status quo on the suit property. The said suit is pending before this Court.

22.8) On 5th May 2021, Mr Prakash Bhatia filed an Application bearing No. 147 of 2021, before this Court seeking transfer of the proceedings filed by 'Y' under DV Act being CC No. 259/DV/2020 and to club the same with the Divorce Petition filed before the Family Court, at Bandra, Mumbai.

22.9) On 24th May 2021, 'Y' registered a FIR bearing No 434 of 2021 (first FIR of which quashing is sought) with the Samata Police Station, under sections section 270, 323 and 504 of the IPC against 'X' and Mr Prakash Bhatia. This pertains to an incident of 8th April 2021.

22.10) On 9th July 2021, Mr Prakash Bhatia filed Criminal Writ Petition bearing No. 2768 of 2021 for quashing of FIR No. 434 of 2021.



The same is being decided by this Judgment and Order.

22.11) On 12th/13th August 2021, 'Y' and Mr Prakash Bhatia allegedly got into an altercation, when 'Y' is alleged to have verbally abused 'X'. Mr Prakash Bhatia, therefore called the Childline Helpline.

22.12) On 13th August 2021 members from Childline Helpline visit the residence of 'X' and conducted an inquiry regarding the incident. It is the case of Mr Prakash Bhatia that, it was during this inquiry that, 'X' for the first time disclosed the incident of sexual abuse suffered by her at the hands of 'Y'. Surprisingly, the home visit report dated 13th August 2021 does not make any reference to any act of the alleged sexual abuse.

22.13) On 14th August 2021, 'X' filed an online complaint to Respondent No. 1 alleging sexual, mental, emotional and physical abuse by 'Y'. That, 'Y' physically tortured and hit 'X' with an hammer.

22.14) In the complaint dated 20th August 2021, and 21st August 2021 filed by 'X' there is no mention or reference to any act of sexual abuse. There are general complaints pertaining to alleged acts of not giving foods, throwing away food made for 'X' etc.

22.15) On 30th August 2021, 'X' filed an application under section 18 of the DV Act. In the application 'X' has allged that since the first day of the marriage 'Y' has touched her inappropriately under the pretext of some examination.

22.16) On 22nd October 2021, in CC 259/DV/2020 protective order was granted in favour of 'Y'. whereby Mr. Prakash Bhatia was interalia



directed to stay away from 'Y' and her two daughters and her relatives and also directed not to harass or pass any remarks on 'Y' and her daughters.

22.17) On 31st October 2021, a FIR No. 746 of 2021, was registered at the behest of 'Y' under section 354D, 509 of the IPC and section 67 of the IT Act. As the name of Mr Prakash Bhatia was not included, based on a application made by 'Y', learned Magistrate 17th Borivali Court, by an Order dated 26th June 2025, ordered further investigation under section 173(8) of the CrPC.

22.18) On 11th November 2021, at the instance of 'X' FIR bearing No. 767/2021 (Second FIR of which quashing is sought) was registered by the Samta Nagar Police Station under sections 8 & 12 of the POCSO Act and sections 354, 323, 504 & 506 of the IPC along with section 75 of the Juvenile Justice Act, 2015, against 'Y'.

22.19) On 22nd November 2021, Mr. Prakash Bhatia, in reply to notice dated 20th November 2021 issued by the Investigating Officer submitted the test result/report of Covid, copies of his travel tickets to China pertaining to travel in the month June 2018, December 2018, April 2019, November-December 2019.

22.20) On 25th November 2021, 'X' submitted a letter seeking proper recording of her statement, as according to her the FIR did not record all the relevant facts which were reported by her.

22.21) On 9th December 2021, Mr Prakash Bhatia filed an Application in the ongoing Divorce Proceedings in learned Family Court, Bandra



seeking prayers restraining access of 'Y' to the matrimonial household.

22.22) On 10th December 2021, a supplementary statement of 'X' was recorded, wherein 'X' made further allegations in respect of the acts of sexual abuse. In addition to the June 2018 incident mentioned in the said FIR, 'X' alleged that, 'Y' committed acts of sexual abuse in December 2018, April 2019, December 2019 and November/December 2020.

22.23) On 17th December 2021, this Court considering the ongoing matrimonial disputes, granted protection to 'Y' from arrest in ABA No. 2879 of 2021 and referred the matter to mediation. On 4th January 2022 Mediator addressed a letter to this Court expressing inability to complete mediation.

22.24) This Court by Order dated 7th January 2022 rejected ABA No. 2879 of 2021. 'Y' being aggrieved by the rejection of the Anticipatory Bail Application, preferred a Special Leave Petition bearing No. 363/2022 before the Hon'ble Supreme Court.

22.25) On 15th January 2022, Mr Prakash Bhatia filed a Criminal Appeal bearing No. 16 of 2022 before the learned Sessions Court, Dindoshi challenging the protective Order dated 22nd October 2021 passed in CC 259/DV/2020. The said Appeal, is stated to be pending.

22.26) On 19th March 2022, Mr Prakash Bhatia filed Criminal Writ Petition bearing No. 1037 of 2022 seeking transfer of investigation in the present matter to a Competent Authority/Agency.

22.27) After more than 5 months, on 2nd May 2022, the statement of



'X' came to be recorded under section 164 of the Code of Criminal Procedure. Surprisingly in the said statement, 'X' only refers to the alleged incident of June 2018, but in an exaggerated manner. There is no reference to the other incidents as alleged in her supplementary statement dated 10th December 2021, which were recorded pursuant to the request of 'X' made by her letter dated 25th November 2021. In the statement of 'X' recorded under Section 164 of the CrPC, the other allegations are in respect of the execution of the gift deed, threats of assault by a hammer, spraying pepper spray on 'X', not allowing the father of 'X' to enter the house, a reference is made to the call to the Child Helpline. A new allegation is made that, 'Y' had taken jewellery and personal documents of 'X'.

22.28) On 30th July 2022, 'Y' registered a FIR No. 1149 of 2022 (Third FIR of which quashing is sought) with the Samata Nagar Police Station against Mr Prakash Bhatia under section 376(2) n, 377, 328, 324, 504 and 506 of the IPC. The allegations pertains to the year 2012.

22.29) On 24th August 2022, at the instance of 'Y' FIR bearing No. 1202 of 2022 was registered with the Samata Nagar Police Station under section 380 of the IPC. It is the allegation of 'Y' that, when 'Y' under and pursuant to the Order dated 17th May 2022 passed by the Hon'ble Supreme Court visited her matrimonial home on 30th May 2022, for collecting her belongings, she noticed that, her room was already opened and her belongings worth Rs 8.5 lakhs were missing.

22.30) On 2nd December 2022, a defamation case was filed by 'Y'.



22.31) On 5th January 2023, Criminal WP No. 1037 of 2022 seeking transfer of investigation was withdrawn by Mr Prakash Bhatia.

22.32) On 10th January 2024, 'Y' registered a FIR No. 19 of 2024 with the Samata Nagar Police Station under sections 420, 406, 465, 467, 468, 471 read with 34 of the IPC against the Petitioner, his elder daughter and other accused.

22.33) On 4th March 2024, Criminal Writ Petition No. 909 of 2021 filed seeking quashing of FIR No. 1201 of 2020, was partly allowed. The prayer for quashing of FIR against Mr Prakash Bhatia was rejected. The Investigating agency was at liberty to file chargesheet after completing investigations. This was in respect of the criminal prosecution filed under section 498A, 323, 504, read with Section 34 of the IPC.

23) Apart from the aforestated proceedings, 'Y' has filed various NC Complaints against Mr Prakash Bhatia i.e (i) NC complaint for removal of belongings of her daughter. (ii) NC complaint for not paying the maids salary. (iii) NC complaint for changing the lock of the room occupied by the daughter of 'Y' (iv) NC complaint for forcefully spreading Covid, (v) NC complaint for changing internet password, (vi) NC complaint for removal of car sticker (vii) NC complaint for removing gas burner (viii) NC complaint for slapping 'Y'. (ix) NC complaint for not allowing 'Y' to collect her belongings. (x) NC complaint for trying to hit 'Y' with his car.



Analysis

24) The aforesaid detailed chronology has been listed herein only to get an overview of the various proceedings which have been initiated by the parties against each other in the past. The one thing which clearly emerges and without any doubt is that, the parties are involved in various proceedings and bitter disputes which originate and arise from matrimonial disputes and financial issues between 'Y' and Mr. Prakash Bhatia. The parties are at complete loggerheads from the year 2020 and have filed complaints/proceedings against each other pertaining to matrimonial issues, multiple financial transactions, property issues, trivial issues, complaints under the Domestic Violence Act and also for serious and grave offences making allegations inter alia under Sections 270, 323, 354, 376(2)(n), 377, 380, 406, 420, 445, 467, 468, 471, 498A, 504 read with 34 of the IPC, under Sections 8 and 12 of the POCSO Act and Section 75 of the Juvenile Justice Act, 2015.

25) Perusal of the record in Criminal Application No. 427 of 2023 would indicate that, according to 'X' and Mr. Prakash Bhatia the facts pertaining to the alleged offences under the POCSO Act, came to light and also to the knowledge of Mr. Prakash Bhatia when 'X' had an interaction with the NGO worker, pursuant to the call made by Mr. Prakash Bhatia to the Childline Helpline. This interaction was in the presence of Mr. Prakash Bhatia. It would be necessary and important to therefore consider the information given by 'X' to the NGO worker, the resultant Home Visit



Report dated 13th August 2021 and also the statements of the NGO workers to the Investigating Authorities. I find it important to note here that, the said statements assume importance as they are made to independent third parties and are first in point of time.

26) I find on record a Home visit report dated 13th August 2021, prepared and submitted by the NGO workers, who in response to the call made by Mr. Prakash Bhatia to the Childline Helpline visited house of 'X'. The information was given by 'X' to the NGO worker. This is the first statement/interaction in which, according to Mr. Prakash Bhatia, 'X' disclosed of the alleged sexual abuse. The said report, after recording the background of the family and other details, contains the following observations made by the NGO worker Ms. Lalita Verma, which reads as under :-

“बच्ची के घर में *visit* किया. घर में बच्ची के पापा और *step mother* साथ में रहती है. बच्ची की मम्मी—पापा का डिवोर्स होने वाला है. बच्ची के पापा *step mother* को मारते हैं और उनके खिलाफ पुलिस स्टेशन में *FIR/NC* भी किया है *step mother* ने. बच्ची के पापा ने *step mother* के नाम से २—३ करोड़ का *Bank Loan* लिया है. और वो *Loan* भर नहीं पा रहे हैं तो डिवोर्स मांग रहे हैं. *Child Line Team* को बच्ची ने बताया कि *step mother* खाना नहीं देती. बच्ची से *Child Line Team* ने पूछा इससे पहले भी उन्होंने वैसा किया है क्या पर बच्ची कहा कि ऐसा कभी नहीं किया. कभी मारा भी नहीं है. पर गुस्सा करती थी. *Child Line Team* आने से एक दिन पहले मम्मी पापा का झगडा हुआ था. तब बच्ची को चिल्लाया था. और *abusing words* बोली थी. और बच्ची की माँ ने उसके *safety* के लिए *pepper spray* रखा है. क्योंकि उनका और *husband* का झगडा होता है. और वो मारते हैं. *Child Line Team* का *observation* से ऐसा लगा कि मम्मी पापा के झगडे के वजह से बच्ची के खाने



का और पढाई का *problem* होता है. *Visit* करने के बाद ऐसा लगा नहीं की बच्ची की *step mother* बच्ची को मारती है.”

27) The observations of the NGO worker, an independent third party would indicate that, there was a divorce/matrimonial proceeding pending and that there was a loan which was taken and due to the non-payment of which, there were matrimonial disputes and other financial issues. This in my opinion appears to be the crux and genesis of the entire dispute and also the reason for the multiple complaints being filed by the parties over a period of time against each other. From the contents of the report, it prima facie appears that, all issues, differences and matrimonial dispute arise out of certain financial matters between ‘Y’ and Mr. Prakash Bhatia. These are facts recorded by an independent third party NGO worker, in the course of and as a part of her duty. In the report, I find that, there is no reference to any objectionable act or conduct which can be found to be objectionable under the POCSO Act. The reference is only to abuses hurled when, there is a quarrel between ‘Y’ and Mr. Prakash Bhatia. The abuses appear to be incident specific and a reaction to and at the time of the quarrel. There is no sexual act or abuse or intent attributed to ‘Y’ in the report dated 13th August 2021. Further as per the say of the Investigating Officer Mr. Ganesh Pawar, as stated in his affidavit filed before the Hon’ble Supreme Court even as late as 7th November 2021 and 9th November 2021 Mr. Prakash Bhati and ‘X’ in their respective statements given to the



enquiry officer did not make any allegations in respect of an act/misconduct under the POCSO Act.

28) It is only on 11th November 2021, in the FIR , that 'X' refers to certain alleged act of sexual misconduct. 'X' in her complaint dated 11th November 2021 has stated as under :

“दिनांक १३/०८/२०२१ रोजी माझ्या सावत्र आईने माझ्या आत्मसन्मानाला ठेस लागेल अशा प्रकारचे “रांड”, “नागिन”, “कुतिया” व “छिनाल” सारख्या निंदनीय शब्दांचा प्रयोग केला. त्याबाबत माझ्या वडीलांनी *Child Helpline* येथे संपर्क करून तक्रार केली असता दिनांक १३/०८/२०२१ रोजी बाल कल्याण समिती यांच्याकडून एक महिला नामे श्रीमती ललीता आली होती. त्यांनी माझ्याकडे चौकशी केली असता माझ्या सावत्र आईने मला अशिल्ल शब्दांचा प्रयोग करून लैंगिक छळवणुक केल्याचे मी सांगितले. तेव्हा माझ्या सावत्र आईने माझी लैंगिक छळवणुक केल्याचे माझ्या वडीलांना प्रथमच माहिती झाले. त्याचप्रकारे माझ्या बेडरूम मध्ये येउन मला तिने मारहाण देखील केलेली आहे. तसेच तिने माझ्या चेह—यावर मिरपुड स्प्रे (*pepper spray*) एक ते दोन वेळेस मारलेला आहे. तसेच मला घरातील वॉशिंग मशिन, मिक्सर, मायक्रोवोवन, *Air Fryer* वापरु देत नाही. तसेच मला माझ्या सावत्र आईने झाडुने व हातोड्याने मारहाण केलेली आहे. माझी सावत्र आई ही नेहमी हातोडा घेउन घरात फिरत असते.”

29) Even in the statement dated 11th November 2021, 'X' has referred to an alleged act of June 2018. All other allegations made in the FIR, are in respect of other acts of verbal abuse, alleged assault and ill-treatment. Most pertinent to note here that, the facts as alleged by 'X' in the FIR have not been mentioned to the NGO workers nor are the same reflected in the Home Visit Report dated 13th August 2021. In case the said facts were informed or stated before the independent NGO workers during



the home visit, the said facts would have been reflected in the home visit report and the NGO workers would have also informed the police authorities as is required under the Act. The said allegation do not find place in the report or any of the statements. The allegations prima facie appear to be doubtful.

30) I lay much importance on the the statements of witness/maids and more particularly the NGO workers and their report as Mr. Prakash Bhatia in his letter dated 25th August 2021 addressed Senior Inspector, Samata Nagar Police Station, Kandivali while complaining against 'Y' has categorically and specifically stated that, it was on 13th August 2021 when the NGO worker visited the house he got knowledge that, 'Y' had allegedly sexually harassed 'X'. I find that, this information as contained in the said written communication is in fact directly contradicted by the Home Visit Report dated 13th August 2021 of the NGO. In the report dated 13th August 2021, there is no reference to any sexual harassment.

31) A useful reference can be made to the statement dated 30th November 2021 of the NGO worker Ms. Varsha Vitthal Pawar who visited the residence of 'X' on 13th August 2021. The statement is recorded by the Investigating Officer and forms part of the chargesheet. Perusal of the statement indicates that, Ms. Varsha Vitthal Pawar, visited the residential house of 'X' on 13th August 2021 pursuant to the call made on 12th August 2021, and had an interaction with 'X' and Mr. Prakash Bhatia. The purpose of her visit was also informed to 'X'. It would of some importance to



mention here that, in reply to the specific query of the Investigating Officer in respect of the allegations made in the FIR and the inquiry as to whether she was aware of or had knowledge of or was informed of the same during her personal visit on 13th August 2021, the said NGO worker in her statement dated 30th November 2021 has categorically stated that:-

“यावेळी पोलीसांनी आम्हास पुन्हा एकदा दाखल गुन्ह्याच्या हकीकती अनुषंगाने आपणास माहे जुन २०१८ मध्ये कु. हीच वडील प्रकाश भाटीया हे १५ दिवसांसाठी चायणा येथे कामासाठी गेले होते. त्या काळात त्यांच्या सावज आई उर्मिला भाटीया हीने तिच्या बेडरूम मध्ये तिन-चार वेळेस बोलावुन फिर्यादीस कुशित घेतले होते. तिने फिर्यादीस कुशीत घेतल्यानंतर प्रत्येक वेळेस तिने फिर्यादीच्या छातीवर हात फिरवुन व योनी वरुन बोटे फिरविली होती. यामुळे कु. मनात लज्जा उत्पन्न झाली होती या विषयी कु. किंवा तीच्यावतीने श्री प्रकाश भाटीया यांनी उपरोक्त दिनांक १३/०८/२०२१ च्या भेटी दरम्यान काही सांगितले होते का याची विचारण केली. त्यावेळी असे संवेदनशिल आरोप ऐकून आम्ही आश्चर्य चकीत झालो कारण असे कोणतेही आरोप कु. हीने तसेच तीचे वडील प्रकाश भाटीया यांनी आम्हा समक्ष केले नव्हते. आम्हा दोघींनशी कु. जवळपास ४० ते ५० मिनीटे वैयक्तीक स्वतंत्ररीत्या संवाद साधुन तीस मानसिक आधार देवुन तिच्याकडे विश्वासाने विचारपुस केली होती. परंतु अशाप्रकारे तिचेही घडलेल्या लैंगिक अत्याचाराविषयी कु. हिने काही सांगितले नव्हते. आमच्या संस्थेच्या नियमानुसार पोक्सो अॅक्ट खाली कोणतीही संवेदनशिल बाब आम्हास समजताच आम्ही तात्काळ आमच्या संस्थेस तसेच बाल कल्याण विभागास माहिती देवून स्थानिक पोलीस ठाण्यास प्रत्यक्ष भेट देवून रीतसर कायदेशिर प्रक्रीया सुरु होणेकामी प्रयत्नशिल असतो. त्यामुळे अशी बाब स्पष्ट झाली असती तर आम्ही नक्कीच योग्य पाउले उचलली असती. वरील प्रमाणे भाटीया कुटुंबीयांच्या व्हीजीटवेळी आम्हास अशी कोणतीही बाब कु. तसेच तीचे वडील प्रकाश भाटीया यांसकडून माहिती झाली नव्हती. सदर प्रकरणी आम्ही बाल कल्याण समिती बोरीवली विभाग मुंबई यांसकडे होम व्हीजीट अहवाल सादर केला आहे.”



32) I have also noted a similar statement dated 30th November 2021 of Ms. Lalita R. Verma also an NGO worker who had visited the residential premises of 'X' on 13th August 2021 is also recorded.

33) The aforementioned statements are of independent third parties, working with a third party NGO and called at the instance of 'X' and Mr. Prakash Bhatia. The said NGO workers being independent third parties have no reason to give an incorrect or an exaggerated or false statement and/or information. It is pertinent that, these persons were the first point of contact and independent third party. The contents of the said statements, in my opinion on a prima facie basis completely demolish the case of an offence under the POCSO Act and in fact negate/neutralize the allegations made in the FIR.

34) The record also indicates that, around the same period of time i.e. August 2021 there are multiple complaints filed by 'X' and Mr. Prakash Bhatia. The said complaints are filed between to 12th August 2021 and 20th August 2021 wherein allegations are raised in respect of an alleged attack by 'Y' on Mr. Prakash Bhatia and 'X' with an hammer and iron rod. The other allegations in the said complaints pertain to throwing out the food kept in the fridge, removing their cloths from washing machine, not allowing Mr. Prakash Bhatia to use the fridge/freezer, washing machine, other home appliances, using filthy abusive language against 'X', not letting them eat food, harassing 'X' and not letting her use the fridge. There is one online complaint dated 14th August 2021, alleging sexual



harassment, without stating any details of time, day, date, etc. I find that no immediate FIR is filed against 'Y' for the alleged act of sexual abuse. There is no serious grievance made in that regard. I find, complaints are made only in respect of trivial issues.

35) In contrast to these complaints and allegations, serious and grave allegations under the POCSO Act are made against 'Y' in FIR No. 767 of 2021 only in November 2021, and then additional allegations are made on 10th December 2021 in the supplementary statement knowledge of which was acquired by Mr. Prakash Bhatia from 'X' as early as 13th August 2021 when the NGO workers visited the residence. It is extremely surprising that, in the midst of such grave and serious allegations entailing serious consequences on 'Y' and the family as a whole, 'X' and Mr. Prakash Bhatia were engaged in filing online complaints in respect of alleged acts as noted above. When the said complaint is read along and considered with the other statements of 'X' and Mr. Prakash Bhatia, the Home Visit Report dated 13th August 2021 and the specific stand of Mr. Prakash Bhatia that, the alleged acts of sexual abuse came to light when the NGO workers visited the house, I find that, the online complaint becomes doubtful. More pertinent, there is no immediate FIR in that regard. In my considered view, the improbable allegations, the malafide intentions and object are clearly made out by the conduct of the parties themselves. In this background, the complaint dated 14th August 2021, does not inspire confidence and prima facie appears to be doubtful.



36) Perusal of the statements of the NGO workers who are third parties, unconnected to the inter se disputes are considered, it prima facie appears that, there were no allegations made by 'X', in respect of any sexual abuse or of any act which would be termed as objectionable or an offense under the POCSO Act. The said NGO workers/witness have categorically and in clear terms, denied of having any discussion or even any reference to allegations of sexual abuse as contemplated under the POCSO Act. Further, if the statements of the maids are considered, the scenario which would emerge is that, the relations between 'Y' and 'X', were cordial to say the least and that, 'Y' would scold 'X' only on issues of cleanliness etc. as any mother under normal circumstances would do. Further, the other aspect which would emerge from the said statements, is that, the relations between 'Y' and Mr. Prakash Bhatia were strained since May 2020. I have also noted that, the matrimonial issues and differences having commenced by then, the divorce proceedings (Divorce Petition No. 875 of 2020) were filed by Mr. Prakash Bhatia in August 2020 which proceeding was the first adversarial proceeding initiated between the parties.

37) Amongst other allegations, an allegation which finds some prominence in the FIR is that, Mr. Prakash Bhatia was forced, compelled and coerced to execute a registered Gift deed, whereby he gifted his 50% share of his right, title and interest in the residential flat to 'Y'. The allegation is that, as 'X' was locked up in a room by 'Y' and due to the said



situation Mr. Prakash Bhatia was forced to execute a registered gift deed. The allegation finds place in the FIR dated 11th November 2022 and also the 164 statement of 'X'. It is specific case and allegation of 'X' in the FIR that, she was locked in the room till her father went to register a gift deed. The said Gift Deed is dated 22nd November 2019 and is now sought to be challenged by Mr. Bhatia by filing a Civil Suit (L) No. 973 of 2021. The allegation in respect of the gift deed in the FIR appears to be improbable and doubtful, for the reason of over implication. I say this for a very specific reason, which is deciphered from the record which forms a part of the chargesheet and is produced by a third party. A useful reference can be made to the school attendance record of 'X' which has been forwarded by the concerned School vide letter dated 13th January 2022 to Mr. Ganesh Pawar, the Investigating Officer. Perusal of the attendance record would prima facie indicate that, 'X' on the date of registration of Gift deed i.e. 22nd November 2019, was infact attending school and present in school. The alleged story that, 'X' was locked up in the room and her father was forced and coerced to execute the registered gift deed on 22nd November 2019 appears to be doubtful. If the contemporaneous record issued by the school an independent authority is considered then at least *prima facie* it is evident that, the allegation that, 'X' was locked in the room and the gift deed was forcefully executed is incorrect and completely improbable. In these circumstances, a case of over implication appears to be prima facie made out. The question which then arises and comes to ones



mind is why is a false and untenable allegation made. Why is there over implication and false accusation. Such unanswered questions and circumstances also call for and warrant a careful examination of the case and the attending circumstances.

38) The allegations regarding an offence under the POCSO Act are serious allegations and have far-reaching consequences on the person accused, as also the victim and the victim's family. In the present case, 'X' and her father, Mr. Prakash Bhatia, though aware, have not made or registered a complaint/FIR till November 2021. The statement of 'X' recorded by the Enquiry Officer on 9th November 2021, so also the statement of Mr. Prakash Bhatia recorded on 7th November 2021 by the Enquiry Officer, make no allegations regarding the POCSO Act. It is only when the FIR was lodged on 11th November 2021 that 'X' made an allegation of an offence under the POCSO Act in respect of an incident of June 2018 only. In her supplementary statement dated 10th December 2021, 'X' has given instances of alleged incidents which, according to her, took place in June 2018, December 2018, April 2019, December 2019, and November-December 2020. The statement under Section 164 of the CrPC of 'X' was recorded on 2nd May 2022, wherein, surprisingly, 'X' has only referred to the incident of June 2018. In the D.V. proceedings, 'X' has alleged that, since day one after the marriage of 'Y', she was touched inappropriately. As regards the allegations of general harassment and ill-treatment meted out by 'Y', 'X' has given different dates and periods of



harassment, inasmuch as, in the FIR, it is alleged that the harassment started in the year 2017; in the statement recorded under Section 164 of the CrPC, it is alleged that the harassment started six months after the date of marriage in the year 2014 and in the D.V. proceedings, it is stated that the general harassment started in the year 2014. Further, it is pertinent to note that, in the statement under Section 164, while 'X' did not refer to the alleged four instances of sexual abuse (as referred in the supplementary statement dated 10th December 2021) but has referred to and made new allegations in respect of some of her jewellery and personal documents, i.e., Aadhaar Card, passport, and birth certificate being in the custody of 'Y'. Such conduct of 'X' makes the entire prosecution doubtful and more so in the background of the various complaints filed by the parties against each other. When the aforesaid statements of 'X' are considered together, in my opinion, a clear case of exaggeration and malicious prosecution is prima facie made out.

39) Perusal of the FIR would indicate that, the allegations have been made after a period of about 3 ½ years from the alleged incident. The allegations prima facie appear to be improbable as the record including the statements of 'X' indicates that, during the said period of time, admittedly there were relatives and house help at the residence. The said facts are even accepted by 'X'.

40) Apart from the fact that the FIR is filed after a period of 3 months from the date of knowledge, I also again find that, a



supplementary statement of 'X' is recorded on 10th December 2021 wherein certain additions and improvements are made. Since August 2021 till November 2021 there is no complaint/FIR made in respect of the said alleged acts of sexual misconduct. Various other trivial complaints are filed by both 'X' and Mr. Prakash Bhatia. The allegations of sexual abuse for the first time surface in the FIR and supplementary statement dated 10th December 2021. Most importantly the allegations of December 2018, April 2019, December 2019 and November-December 2020 do not find place in the statement recorded under Section 164 of CrPC. The peculiar circumstances and the manner in which the details surface, coupled with the unexplained delay and keeping in mind the acrimonious relations between the parties, the allegations prima facie appear to have made at the behest of Mr. Prakash Bhatia for self serving purposes. The unfortunate child and a beneficial social welfare legislation to my mind is misused as a weapon in the fight between the parents i.e. matrimonial disputes and financial issues.

41) Considering the overall circumstances and a prima facie perusal of the record is indicative of the fact that the allegations are doubtful. I say this for the reason that, the allegations in the FIR or the statement of the 'X' has to be viewed, considered and analysed on a prima facie basis in the backdrop of the peculiar facts of this case and the argument of a mala fide and malicious prosecution. In the present case, there are financial issues between the parties, there is a fiercely fought and



contested matrimonial proceeding, there are various serious criminal prosecutions filed by the parties (three of which are being considered herein). Individually the parties i.e 'Y' and Mr. Prakash Bhatia are at loggerheads. The parties are fiercely contesting and opposing each other in various litigations. The possibility of a mala fide and malicious implication, filing frivolous complaints and litigations only with a view to spite the other, wreck vengeance and negotiate a favorable settlement is extremely high. The litigation are loaded with malice, malafides, personal vendetta. At the bottom of all are the matrimonial disputes and financial issues.

42) The aforestated observations and the context for making the said observation will become more clear from the next aspect which is to be discussed. The Investigating Officer Mr. Ganesh B. Pawar has filed an affidavit before the Hon'ble Supreme Court in Special Leave Petition (Criminal) No.363 of 2022. In paragraph Nos.5 and 6, of the said affidavit the Investigating Officer has stated facts which were disclosed during the investigation which read as under :

"5. I say that the following events prior to registration of the FIR and investigation which are relevant to the controversy are as follows:

- a. The complainant victim girl's father made a written compliant on 25/08/2021 alleging commission of offence of ill-treatment. However, there was no allegation of offences under section 8 and 12 of the POCSO Act.*
- b. Prior to this, there were several NCs and online complaints lodged by the complainant victim girl's father against the Petitioner and vice versa on account of*



matrimonial disputes.

- c. *On 11/08/2021, the complainant victim girl's father made a complaint to the Child Helpline 1098 against the Petitioner. Pursuant to the complaint, two lady representatives from the said Helpline visited the house of the complainant victim girl and made enquiries from the complainant victim girl, her father and the Petitioner. After sufficient enquiries, they submitted their Home Visit Report to Child Welfare Committee (CWC) Maharashtra.*
 - d. *In 20/10/2021, the office of the Commissioner of Police, Mumbai received a copy of the complaint from the National Commission of Protection of Child Welfare, which in turn was forwarded to Juvenile Aid Police Unit (JAPU) of Mumbai Police upon which enquiry officer received instructions to expedite the inquiry into the matter.*
 - e. *On 07/11/2021, the enquiry officer recorded the statement of the complainant victim girl's father, wherein no allegation regarding POCSO Act was disclosed.*
 - f. *On 09/11/2021, the enquiry officer recorded the statement of the complainant victim girl, wherein no allegation regarding POCSO Act was disclosed.*
 - g. *On 10/11/2021, the enquiry officer alongwith the complainant victim girl and her father attended the office of Child Welfare Committee, Matunga, when the Child Welfare Committee directed him to register an FIR under POCSO Act and other relevant Acts.*
 - h. *On 11/11/2021, the complainant victim girl lodged FIR adding a paragraph under POCSO Act against the Petitioner.*
6. *I say that the following facts have been disclosed during the investigation carried out:*
- a) *The photocopy of age certificate of complainant victim girl has been received from her father after perusal of which it was found that date of birth of complainant victim girl is 26/9/2004.*
 - b) *For registering the statement of complainant victim girl under Section 164 of Cr. PC, a request was made to Metropolitan*



Magistrate, 63rd Court, Andheri (East), Mumbai vide Outward No 8244/2021 dated 12/11/2021 and the Magistrate has given date of 21/3/2022.

- c) The medical examination of complainant victim girl was commenced on 12/11/2021 at Dr. Babasaheb Ambedkar Hospital, Kandivli (West), Mumbai and has been completed on 16/11/2021.*
- d) The papers relating to the offence have been submitted to Child Welfare Committee, David Sassoon Home, Matunga West, Mumbai through Lady Police Staff on 17/11/2021.*
- e) On 19/11/2021, the Investigation Officer visited the place of residence of the complainant victim girl and under panchanama procured the memory cards of CCTVs installed there at. He also seized kitchen utensil Khalbatta (Pounder used to pound grain).*
- f) In view of the incidents mentioned in the history of complaint, the entries of non-cognizable offences, entries of station diary available in record of Samta Nagar Police Station have been obtained and they have been included in papers of the offence.*
- g) The Housemaids who were working at the residence of the Victim girl's Father's house during different periods since 2018 to 2021, were called upon for investigation purpose and statements of both Housemaids have been recorded. The said statements does not mention about allegations under the POCSO Act.*
- h) The statements of two representatives from Child Helpline who visited the residence of the complainant victim girl on 13/08/2021 pursuant to the complaint dated 11/08/2021 are also recorded. They have submitted their Home Visit Report to the Child Welfare Committee, Matunga and they have repeated the contents of their Home Visit Report but denied that the complainant victim girl informed them about any sexual harassment by the Petitioner during the home visit.*
- i) The statement of the Petitioner is recorded on 09/12/2021 and 19/12/2021, when she has denied the allegations made in the FIR. She has submitted whatsapp chat messages and various photographs of the family, showing that she had cordial relations with the complainant victim girl.*
- j) On 14/01/2022, the Investigation officer has received a letter from Mrs. Geeta Saxena (sister of the Petitioner), R/o Faridabad,*



Haryana stating that she alongwith her two small children visited the Petitioner during 11/06/2018 to 21/06/2018. She has attached her train travel details of the said period alongwith whatsapp chat messages and family photographs showing that she made the trip and that relations were cordial between the Petitioner and the complainant victim girl at that time.

- k) After registration of the FIR, the Petitioner is not staying at the residence of the complainant victim girl and search was effected of the Petitioner's bedroom but except certain medical prescription reports of the complainant victim girl, nothing relevant has been recovered.*
- l) Pursuant to the notice u/s.91 CRPC served upon the Victim girl's Father, he has submitted CCTV Camera clippings and screenshots, his travel documents when he visited China and Covid 19 medical reports of the Victim girl and Father during the relevant period.*
- m) On 26/11/2021, the complainant victim girl's father submitted an application about 3 Additional POCSO incidents which took place during December, 2018, April, 2019 and December, 2019 when the compliant victim girl's father was in China for professional work. The further statement of the complainant victim girl's father has been recorded incorporating the fresh allegations. Also, on 07/12/2021, the complainant victim girl's further statement incorporating the fresh allegations has been recorded. Therefore the IO added Section 9 (l) r/w Section 10 of the POCSO Act in the present FIR.*

43) The Affidavit of the Investigating Officer, clearly indicates that:- (i) before the NGO workers and in the online complaints there was no reference to the allegations under the POCSO Act; (ii) there was no allegations relating to POCSO from 12th August 2021 till 11th November 2021. Till 11th November 2021, there were various complaints/Nc's filed by 'X' herself and her father Mr. Prakash Bhatia so also their statements were recorded. None of the said complaints had allegation of POCSO. (iii) statements of the independent third parties have been recorded, wherein



there are no allegations nor even a reference or mention of any sort of incident or act committed under the POCSO Act. (iv) 'Y' has submitted whatsapp chat messages and various photographs of the family, showing that she had cordial relations with 'X'. (v) Mrs. Geeta Saxena, sister of the 'Y' alongwith her two small children visited the 'Y' during 11th June 2018 to 21st June 2018. Her train travel details of the said period alongwith whatsapp chat messages and family photographs showing that she made the trip and that at the relevant time relations were cordial between 'Y' and 'X' have been submitted .

44) In my opinion, a perusal of the affidavit of the Investigation Officer would clearly indicate that, the allegations under the POCSO Act have been made at a belated stage, and are accompanied by an unexplained delay. The overall conduct of the 'X' and Mr. Prakash Bhatia, in not filing the complaint, filing frivolous complaints on not so important issues, despite of being aware of the alleged acts does not appear to be that of a normal and prudent person. Filing the complaint after an unexplained delay of 3 months makes the complaint doubtful. In the present case unexplained delay assumes greater significance in view of the peculiar facts of the present case, the chequered history of litigation, pending criminal complaints/FIR's and the unusual conduct of the parties. The possibility of exaggeration and the danger of introducing a distorted and/or coloured version, a concocted story as a result of a well thought of and crafted



strategy/afterthought cannot be ruled out. In fact considering the peculiar facts of the case, the said possibility is on the higher side.

45) Perusal of the record would also indicate that, the sister of 'Y' by a letter dated 14th January 2022 addressed to the Senior Inspector, Samata Nagar Police Station has informed the investigating agency that, she along with her two children was residing with 'Y' and her family at the residence from 11th June 2018 to 21st June 2018. In the said letter dated 14th January 2022, Mrs. Geeta Saxena, has also submitted her train travel details of the said period along with whatsapp chat messages and family photographs showing that, she made the trip and that at the relevant time relations were cordial between 'Y' and 'X'. Pertinent to note that, it is exactly during this period that, the father of 'X' had gone to the China. He had left India on 12th June 2018 and returned back to India on 20th June 2018. The allegations made, also pertain to the same period. Considering the factual background of this case, the peculiar facts, it appears doubtful that, acts as alleged by 'X' would have taken place when such a large number of relatives and third parties are present at the residence. 'X' makes no reference to the aforesaid facts. Such conduct tends to add to the "doubtfulness" of the allegations and criminal prosecution and to the concept of "over implication" or "weaponizing" the POCSO Act. It appears that, the POCSO Act is used as a defense mechanism or is weaponized.

46) The learned Advocate appearing for the Respondent No.2 in Criminal Application No. 427 of 2023 also contended that Section 29 of the



POCSO Act raises a presumption in respect of offences under Sections 3, 5, 7 and 9 of the POCSO Act to presume that such person has committed or abetted or attempted to commit the offence unless the contrary is proved. He would further refer to Section 30 of the POCSO Act to submit that in a prosecution for any offence under the POCSO Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state. That, in view of the provisions of the said sections, this Court ought not to interfere with the criminal prosecution at this stage.

46.1) Considering the peculiar facts of the present case, there are serious doubts on the genuineness and veracity of the allegations made in the case. More particularly, considering the statements of the two NGO workers, the variance in the statements of 'X', the conduct of the parties, the pending litigation, various criminal complaints and the Affidavit of the Investigating Officer filed before the Hon'ble Supreme Court, I am of the considered view that, from the facts itself the allegations themselves appear to be highly improbable, exaggerated and made with a malicious intent and mala fide intention to suit one's needs. The foundational and basic facts itself are doubtful and not established. One must also keep in mind the cardinal principle of criminal law that, the person is presumed to be innocent till he is proved guilty. The presumption as envisaged under Section 29 is rebuttable as is the case with all presumptions. The presumption under Section 29 cannot be considered to be an absolute



presumption and would come into operation and play only when the foundational facts are established to draw the said presumption. The foundational facts would mean the essential basic facts, based on relevant and credible material. While exercising the powers under Section 482 of the Code of Criminal Procedure, the Court has to keep in mind that, the powers are to be exercised to meet the ends of justice and prevent the abuse of the process of law. When a case appears to be improbable, filed with mala fide intentions and to wreak vengeance at such times the Court under Section 482 of the CrPC can exercise its powers. The Hon'ble Supreme Court in the case of *Just Rights for Children Alliance v. S. Harish*, (*Supra*) has also observed that:-

“188. As has been held in Prakash Nath Khanna (supra) and Rathis Babu Unnikrishnan (supra), any defence of the accused for the purpose of rebutting the said statutory presumption should ordinarily be left to the trial court to be looked into at-least when it comes to quashing petitions. Though, in certain exceptional circumstances, the High Court may entertain such defence to quash the criminal proceedings where it appears from the facts itself that the allegations themselves are completely false and bogus and by no stretch of imagination said to be established. But in doing so, the High Court must be slow and circumspect & must exercise some restraint. The statutory presumption may be ignored only where no foundational facts have been established from the material on record.”

46.2) Considering the peculiar facts of the case the nature of the allegations and the chequered history of matrimonial disputes and financial issues, further the various criminal proceedings, the exaggerated and contradictory versions in my considered view this case is an exceptional



and rare case where the Court ought to exercise the power to entertain the defenses also look at all the attending circumstances in the case and litigations between the parties. The present case appears to be improbable and a case of over-implication filed with mala fide intentions and with vengeance.

47) Considering the aforesaid peculiar facts of the present case, I am of the opinion that, the Applicant/'Y' has made out a case for exercising jurisdiction under Section 482 of the Code of Criminal Procedure, even though the provisions of Section 29 and 30 raised a presumption.

48) Perusal of the record in Criminal Writ Petition No. 2768 of 2021 would indicate that, the alleged incident took place on 8th April 2021 at around 10.30 p.m. 'Y' immediately on 9th April 2021 at about 12.30 am registered N.C. with the Samata Nagar Police Station under Sections 323, 504 and 506 of the IPC in respect of the alleged incident. The information provided by 'Y' has been recorded in the N.C. in clause No.4, which reads as under :-

“४)तक्रारीची थोडक्यात माहिती :- यातील तक्रारदार व विरोधक हे नात्याने पत्नी—पती असून वर नमूद पत्यावरती एकत्र राहतात व त्यांच्यामध्ये कौटुंबिक कारणावरून वाद सुरु असून तक्रारदाराची विरोधकावरती कोर्टात केस सुरु आहे.
तक्रारदाराची तक्रार अशी की यातील नमूद तारीख, वेळी व ठिकाणी विरोधक हे कोविड पॉझिटिव्ह असल्याचे त्यांनी तक्रारदारांना सांगितले असता तक्रारदारांनी त्यांना त्यांच्या रुम मध्ये आयसोलेशन होण्यास सांगितले असता विरोधकाने त्यांना धक्काबुक्की करून शिवीगाळ केली म्हणून तक्रार नोंद.”

49) It appears on 9th April, 2021, 'Y' also addressed a handwritten letter dated 8th April 2021 to the Police Inspector, Samata Nagar Police



Station, Mumbai (inwarded to the Police Station on 9th April 2021 at about 1:15 a.m.) wherein she has made allegations that, the Petitioner tried to spread Covid-19 virus by forcefully holding her close to his mouth and blowing air on her face. The complaint reads as under:-

*“The Police Inspector
Samata Nagar Police Station, Mumbai,
Kandivali East, Mumbai 400101*

*Subject: My ex-husband hit me and tried to spread
covid by forcefully entering in my room.*

Around 10:30 p.m. on 8th April, 2021 my ex-husband told my maid to call me out of the my room. When I came out to ask him what happened he pushed me in my room. I got hurt on my head back and on my arms, he said he is covid positive and his daughter is also covid positive and he removed his mask grabbed me and entered my room and said he will spread it to me also around 10:49 p.m. I called 103 number around 12:00 p.m. constable Suraj Shinde came who was drunk on duty and told me to come to Samata Nagar Police Station, Mumbai and lodge complaint against the Prakash Bhatia. He is still in my room.

Kindly remove him from my room and take him to hospital.”

50) Further ‘Y’, by an email dated 10th April 2021, addressed to Samatanagar Police Station and superior authorities including the Deputy Commissioner of Police, Zone 12 and the Commissioner of Police, Mumbai requested that, her said email be treated as an FIR against the Petitioner for forcefully trying to infect ‘Y’ with COVID-19 virus. The contents of the said email are reproduced herein

“ Dear Sir,

This is to bring to your notice that my husband Prakash Bhatia, resident of 1801, Tower-2, Challengers CHS, Thakur Village, Kandivali East, Mumbai-400101 on 8th April 2021 (Thursday) came home around 10.30 pm and told me that he is corona positive and showed his lab report which showed that he was positive and that



he wants it to spread it to me, he removed his mask and forcefully pounced himself on me and starting physically harming me by twisting my arm and started blowing air from his mouth on my body saying that he will infect me with Corona. Further, he forcefully entered my room which had my cash of around 50,000/- rupees, my jewelleryes, expensive perfume, watches, sarees, my purse, footwear and other valuables. I am extremely scared from his behaviour and fear for my life. Since he is infected I cannot go back to my house until the quarantine period and I somehow managed to escape him and now reside at my Parent's house in Charkop.

Further, In my absence he called a key maker named Shankar (Mobile no: 9892843554) on 9th April 2021 at around 6.24 pm and got a duplicate key made of my room. Also, he has disconnected the CCTV camera installed at the directions of honourable Sessions Court at Dindoshi.

Since I am unable to report to the Samta Nagar Police Station due to strict lockdown conditions, I request you to treat this email as my official complaint and register an FIR against Prakash Bhatia for forcefully trying to infect me with Covid-19 despite being aware that he is infected by it and forcefully entering my room and endangering my life and physically assaulting me.

I request you to take appropriate action against him at the earliest and save my life from danger.

Thanks & Regards,

‘Y’

51) The FIR has then been lodged on 24th May 2021 wherein the contention of ‘Y’ in respect of said incident has been recorded and which reads as under :-

“मार्च २०२१ पासून संपुर्ण भारतात कोरोना प्रादुर्भाव पसरल्याने विशेषतः महाराष्ट्रात त्याचे प्रमाण अतिशय वाढले होते. म्हणून मी दिनांक ०६/०४/२०२१ रोजी को-शिल्ड ही लस घेतली होती. त्यामुळे मला थोडा ताप येत होता. दिनांक ०८/०४/२०२१ रोजी मी माझ्या रुम मध्ये आराम करीत असताना रात्रौ २२:३० वा च्या दरम्यान माझे पती यांनी आमच्याकडे २४ तापासासाठी काम करणारी मोलकरीण नामे श्रीमती संगिता सोरेंग हिला मला बोलाविण्यास सांगितले. म्हणून मी माझ्या रुम मधून बाहेर आले असता माझ्या पतीने मला धक्का मारत माझ्या रुम मये नेत असताना मला हाताने व लाथेने मारहाण करून माझ्या डोक्याला माझ्या कमरेला व माझ्या



हाता—पायाला दुखापत केली. तेव्हा माझ्या पतीने मला शिवीगाळ करून तो व माझी सावत्र मुलगी कु. कृतिका हे दोघेही कोरोना पॉझिटिव्ह असल्याचे सांगून त्यांना त्यांच्या तोंडावरील मास्क काढून मला पकडून जबरदस्ती जवळ ओढले व माझ्या तोंडा जवळ २ ते ३ वेळेस फूंकर मारून मला कोरोनाचा संसर्ग देत आहे असे म्हणाले. म्हणून मी महिला मदत क्रमांक १०३ यावर संपर्क करून मी मदत मागितली असता पोलीस आले. त्यानंतर मी समतानगर पोलीस ठाणे, मुंबई येथे जाऊन माझे पती श्री. प्रकाश भाटीया यांच्याविरुद्ध तक्रार दिली असता त्यांच्याविरुद्ध अदखलपात्र गु.र.नं. ८१३१/२०२१ दिनांक ०९/०४/२०२१ कलम ३२३, ५०४, ५०६ अन्वये अदखलपात्र गुन्हा दाखल करण्यात आला होता.”

52) The record indicates that, the Petitioner and his daughter were reported to be COVID positive on 8th April 2021 whereas, ‘Y’ and her family members were reported to be COVID positive on 17th April 2021 i.e. after a period of 9 to 10 days.

53) Perusal of the NC Complaint, which was first in point of time filed on 9th April 2021 does not refer to any act or conduct that would call for invoking the provisions of Section 270 of the IPC. In fact, the N.C. does not even refer to any act or conduct which would fall under Section 270 of the IPC. In the N.C. the case of ‘Y’ is that of voluntarily causing hurt under section 323, intentional insult with the intent of provoking breach of peace, under section 504 and criminal intimidation under section 506 of the IPC. The N.C. complaint dated 9th April 2021 i.e. the first written complaint only refers to the fact that, the Petitioner on informing ‘Y’ that he is covid positive was directed to restrict himself in the room and remain in isolation. Due to the said directions, the Petitioner abused and assaulted ‘Y’. I have also noted that, the N.C. which is given much prior to the filing of the FIR does not refer to the allegations of Section 270 of the IPC.



Abusing and having an altercation and committing an act as is contemplated under Section 270 of IPC are two very different and distinct things. A particular intent and malice is required to invoke the provisions of Section 270 of IPC. The nature of the act and conduct required to invoke the provisions of Section 270 of the IPC is very different, distinct and severe. To attract the provisions of Section 270 of the IPC, what is required is a deliberate intentional action driven by deep malice intent or ill will or a deeply harmful behavior that is capable of spreading toxicity through the society or public to cause injury. The NC complaint and the contents thereof negate the possible invocation of Section 270 of the IPC or the required intent. The N.C. refers to different offences which are completely distinct and different in character and the intent required is also completely different. On the allegations made in the NC (first in point of time), it is highly improbable to make out the ingredients for the offence under Section 270 of IPC. More pertinent is the fact that the N.C. complaint filed by 'Y' in respect of the incident dated 8th April 2021 neither refers to the offence under Section 270 of the IPC nor does it pertain to the said provision, nor is any act or conduct reflected therein which would, at least prima facie, make out an offence under Section 270 of the IPC. It is only in the subsequent complaint and the FIR, filed on 24th May 2021, i.e., after more than 47 days which refers to the allegations pertaining to Section 270 of the IPC. It is also pertinent to note that, there was no medical record which could be co-related to the incident of 8th April 2021



in respect of offence under Section 323 of the IPC. The subsequent complaints, email and FIR therefore clearly appear to be a afterthought.

54) A conjoint reading of the N.C. complaint dated 9th April 2021, which is first in point of time, the hand written complaint dated 8th April 2021 inwarded thereafter, the email dated 10th April 2024 and the FIR dated 24th May 2021 would indicate that section 270 of the IPC was not invoked at the very first instance. In my considered opinion, 'Y' has tried to improvise the allegations and makes some additions in an attempt to invoke different offences. This cannot be permitted.

55) Perusal of the record would indicate that, the FIR and the said complaint are at significant variance in respect of the manner in which the alleged offence i.e. the act of spreading Covid was undertaken. In the N.C. different version appears without any allegations under Section 270 of IPC. 'Y' has materially altered, improved and exaggerated her version of the incident.

56) The record indicates that the parties have filed various legal proceedings and criminal complaints against each other. The said adversarial litigation dates back to August 2020. In this background, with the chequered history of disputes, litigation and pending criminal prosecutions the possibility of over implication or a malacious afterthought creeping in cannot be ruled out. The record indicates that, there is a bitter and acrimonious litigation history between the parties. The main proceedings between the parties are certain matrimonial disputes, certain



financial issues and proceedings filed under the criminal law involving serious offences of IPC and offences under the Protection of Children from Sexual Offences Act, 2012. I find that, in the present case, at the first instance no allegation was made in respect of Section 270 of IPC. In the subsequent complaints there is material variance in the manner in which the allegations are made and in fact the allegations are to large extent different and distinct. In the email dated 10th April 2021 'Y' has referred to the fact of an amount of Rs. 50,000/-, jewellery, expensive perfumes, watches, sarees and footwear being in the room. There is reference to making duplicate keys. On perusal of the complaints it is clear that the information in the complaints and the manner in which the alleged incident took place is at a stark variance and has changed over a period of time and an entire different and distinct offence i.e. section 270 of IPC is invoked.

57) Prima facie considering the peculiar facts and circumstances of this case, it appears that the FIR is a classic case of over implication. If one takes into consideration, the multiple litigation filed and the allegations made therein, the possibility of over implication and/or exaggeration cannot be ruled out. The present criminal prosecution is clearly and manifestly attended with malafides and instituted maliciously with unfair motives for wreak vengeance and with the object to spite the other side due to a personal grudge. In the facts and circumstances of this case, I find that this is a fit case where the inherent power of this Court under Section



482 of the CrPC ought to be exercised so as to prevent the abuse of process of law and to secure the ends of justice.

58) Perusal of the record in Criminal Writ Petition No. 3779 of 2022, would indicate that, the FIR dated 30th July 2022 pertains to the allegations of May, 2012. The offences are registered under sections 377, 376(2)(n), 323, 324, 504 and 506 of the IPC. There is an inordinate delay of more than 10 years for which there is no explanation. Though in such matters delay cannot be the sole ground to interfere in a quashing petition, but a case of inordinate and unexplained delay stands on a different footing. An inordinate and unexplained delay in filing the FIR would raise doubts as to the genuineness and correctness of the allegations. In such cases of inordinate and unexplained delay the possibility of a colored and exaggerated version creeping in cannot be ruled out.

59) As per the allegations in the FIR, the Petitioner took 'Y' for a drive and to a resort at Thane. That, after spiking her drink, committed the offence of rape, filmed the act and blackmailed and forced 'Y' to get married to him. According to 'Y' the forceful marriage took place on 28th November 2014. When these allegations are juxtaposed with the allegations in FIR No.1201 of 2020 dated 4th October 2020 also filed by 'Y' under Section 498A, 323, and 504 read with Section 34 of the IPC, a different story emerges. In FIR No. 1201 of 2020, 'Y' has given a completely different version and in fact a contradictory story. In the said FIR No. 1201 of 2020 there is no reference to any forceful marriage. In FIR



No. 1201 of 2020, 'Y' has specifically stated that, the Petitioner proposed marriage to her in August, 2012, when at the first instance, she had refused the proposal. I have also noted the statement of 'Y' in FIR No. 1201 of 2020 where she has specifically stated that, when she refused the said marriage proposal, the Petitioner did not force her into marriage as they had a good friendly relation. This statement is totally contrary to the statement made by 'Y' in FIR No.1149 of 2022 dated 30th July 2022, wherein 'Y' had stated that the Petitioner asked her for marriage in 2014 and when she refused the marriage proposal, the Petitioner threatened her that he would circulate the video on porn site and to her relatives and would kill 'Y's daughters.

60) Prima facie, the said allegations are completely contrary to FIR No. 1201 of 2020 which relates the events up to the marriage and put up a different case. The very foundation of the allegation and the alleged reason for the threat and duress is negated when one reads, both the FIR's filed by 'Y', together.

61) 'Y' in FIR No. 1201 of 2020, dated 4th October 2020 has specifically stated that, she had a good friendly relation with the Petitioner and used to communicate with him on Whatsapp and chat with him through the messenger. 'Y' specifically admits in FIR No. 1201 of 2020, that after a few days the said friendly relations converted and developed into love and therefore, she agreed for marriage with the Petitioner. This statement is also contrary to the allegation in the FIR in the present case.



‘Y’ has raised different allegations in respect of a particular event i.e. marriage and proceeded to prosecute the Petitioner under two different offences. The issue is not of different and distinct offences, but is of making contrary allegations which imply that at least one of the allegation is false to the knowledge of ‘Y’. If the contents of FIR No. 1201 of 2020, dated 4th October 2020 are read along with the present FIR No. 1149 of 2022, dated 30th July 2022, it prima facie appears that, the allegations are exaggerated and filed with mala fide intention and some oblique motives. It appears that the said allegations are made to wreak personal vengeance/vendetta.

62) As regards the allegations under Section 377 in the complaint dated 30th July 2022, ‘Y’ has alleged that the Petitioner after their marriage would visit different pornographic sites and insist that ‘Y’ acts accordingly, that if she refused the Petitioner would forcefully make her drink alcohol and then assault/bite her and forcefully perform unnatural and natural physical intercourse against her consent. In the complaint dated 4th October 2020, filed by ‘Y’ has only made a passing reference to obscene videos. As stated above, she has specifically stated in FIR No. 1201 of 2020, that she fall in love with the Petitioner. A further reference for the fight / quarrel is that the Petitioner wanted a male child. It is further stated that, as ‘Y’ would refuse to undergo the pregnancy considering her age, the Petitioner would assault her. The other allegations in the Section 498A complaint are in respect of financial transactions. I find that, the allegations made by ‘Y’ in both the FIR’s are distinctly and clearly contrary



to one and other. Further, the record indicates that the parties have ongoing litigations, primarily emerging from matrimonial disputes and financial issues. In this background the possibility of making exaggerated claims and filing criminal prosecutions with mala fide intentions and motives cannot be ruled out.

63) Having regard to the peculiar facts and circumstances of the present case, this Court is prima facie satisfied that the impugned FIR No. 1149 of 2022 appears to be tainted by mala fides and founded on incorrect and contrary allegations. A consideration of the multiple litigations between the parties, read in conjunction with the allegations contained in FIR No. 1201 of 2020, gives rise to a reasonable apprehension that the allegations in the present FIR No. 1149 of 2022 are either improbable, incorrect or materially exaggerated.

64) The present criminal prosecution is clearly and manifestly attended with malafides and instituted maliciously with unfair motives for wreak vengeance and with the object to spite the other side due to a personal grudge. Criminal proceedings and prosecutions cannot be permitted to be continued on exaggerated versions and/or prima facie improbable and malafide allegations. It cannot be that, the same facts are twisted, statements blatantly contradicted only to initiate and make out a case in different criminal prosecutions.

65) Considering the aforesaid facts, attending circumstances and material on record by way of the FIR and the chargesheet, I am of the firm



view that, this Court cannot allow the misuse of the criminal law system and the criminal laws in matrimonial disputes, family disputes and financial issues/disputes to seek vengeance or to be used as an arm-twisting tactic or a defence mechanism. In the present case, where one considers the background facts and litigations and the facts of the present 3 cases and the conduct of the parties, the same are prima facie indicative of the fact that, apart from the facts put forth, there is much more than what meets the eye. The parties herein are involved in fiercely contested and fought-out matrimonial disputes, family and financial issues. In such a scenario none of the parties, and in no circumstances, can be allowed to misuse the law. The rule of law and the overall interest and administration of justice are to be placed above all inter-se private issues and interests. Considering the long list of pending criminal prosecutions and the pending matrimonial disputes, it appears that cleverly worded and drafted complaints, and well-crafted and designed strategies are being used by the parties as a defence mechanism or as a counter-attack. There is a blatant abuse and misuse of the criminal law system to meet the underlying ultimate object of a favourable settlement. The system is misused as an arm-twisting tactic, which should not be allowed or permitted to continue under any circumstances.

66) In the present criminal proceedings, after considering the entire material on record, it prima facie appears that, the criminal proceedings are manifestly attended with mala fide and maliciously



instituted with an ulterior motive for taking vengeance, with a view to spite the other side due to private and personal grudge.

67) Considering the entire allegations, facts, circumstances and the perusal of the chargesheet would indicate that the present three FIR's are off shoots of the various matrimonial disputes and financial issues and litigations, both civil and criminal, which have been filed by 'Y' and Mr. Prakash Bhatia against each other. The disputes appear to have started with the filing of the matrimonial proceedings in August 2020.

68) In Criminal Application No. 427 of 2023, the independent third party, i.e., the NGO workers, have categorically stated that 'X' did not complain or inform them of any act or conduct of 'Y' which would be or amount to an offence under the POCSO Act. The Home Visit Report dated 13th August 2021 does not refer to any allegation of sexual abuse. On the contrary, the contents of the Home Visit Report dated 13th August 2021, in the clause "Observations", in fact give out the real reason for the dispute and acrimony between 'Y' and the Petitioner, which is stated to be a matrimonial dispute and certain financial transaction issues. This, according to me, is the real reason for the entire fight and the present criminal prosecutions. Further, the falsity of the allegations of the Petitioner regarding being forced to execute the gift deed on 22nd November 2019 is evident from the letter of the concerned school, which would prima facie indicate that 'X' was, in fact, attending the school on the said date. The same on a prima facie basis makes extremely



doubtful about the allegations in respect of the forced execution of the gift deed. Further, despite having knowledge since August 2021, the Petitioner 'X' chose not to file the complaint under the POCSO Act till November 2021, which speaks volumes of the intent of the parties. There is material variance in the FIR, supplementary statement, statement under Section 164, and the D.V. proceedings in respect of the acts of sexual harassment. Further the chequered litigation background also makes the FIR doubtful.

69) Considering the statement of the independent witnesses, the Report of the NGO, the Affidavit of the Investigating Officer, the other attending facts and circumstances, including the inconsistency in the FIR and the 164 Statement the allegations made in the FIR appear to be doubtful. In my considered view, the possibility of making incorrect, unfounded and exaggerated allegations cannot be ruled out. Considering the various litigations and proceedings filed by the parties, it appears that the parties have filed and initiated malicious and mala fide proceedings against each other for personal vendetta.

70) Considering the entire facts and circumstances and the documents available in the charge-sheet, I am of the prima facie opinion that, none of the offences as alleged in the FIR have been made out much less any offence under the POCSO Act. The investigation and the chargesheet would reveal that, none of the independent third party witnesses have stated or even vaguely referred to any allegation relating to the POCSO Act. The independent NGO workers, through whom Mr.



Prakash Bhatia claims to have learned of the acts, have not referred to or stated of any allegations of POCSO have been informed to them or neither the home visit report nor to the Investigating Officer during the inquiry/investigation. The parties, allegedly being aware of the serious allegations continued to file the most trivial of the complaints/NC. Except the belated attempt made by Mr. Prakash Bhatia and at his instance by 'X', there is no allegation in respect of POCSO. The Investigating Officer, on oath in an affidavit filed before the Hon'ble Supreme Court has specifically stated that, there was no allegation of POCSO made till filing of the complaint on 11th November 2021. Considering these facts, in my opinion even the foundational facts as required are not made out.

71) In Writ Petition No. 2768 of 2021, the allegations appear to be doubtful, as at the first instance, when the NC complaint is filed, there is no reference at all to the allegations in respect of Section 270 of the IPC. Further, in the subsequent complaints, when the allegations under Section 270 have been added, I find that the complaints are at material variance and have been improvised to a large extent in an attempt to make out other offences.

72) In Writ Petition No. 3779 of 2022, I find that there is no explanation for the inordinate delay of 10 years in filing the FIR. Furthermore, and more importantly, the allegations in the said FIR No. 1149 of 2022, when juxtaposed and compared with the allegations in FIR No. 1201 of 2020 made by 'Y', are completely contrary to each other



and would, in fact, negate and neutralize the allegations in FIR No. 1149 of 2022. In addition to the same, considering the chequered history of litigation between the parties, the possibility of a mala fide and malicious implication cannot be ruled out. As stated earlier, 'Y' and the Petitioners have both based their case on the fact that the FIRs are lodged with a malicious and dishonest intention and that the prosecutions are thoroughly malicious.

73) I find that, between 'Y' and her husband Mr. Prakash Bhatia there are serious matrimonial disputes, disputes pertaining to and allegations of serious financial irregularities/misuse and property disputes. The matrimonial dispute is pending since the year 2020 and is the first in point of time. The other disputes regarding property etc. are pending since 2021. The criminal prosecutions filed by the parties against each other are for serious and grave offences. In my opinion, and on a broader canvas, if one were to juxtapose the timing of filing of the proceedings or consider the manner and pattern in which these disputes and criminal prosecutions have come into existence and then relate it to the passing of any order or happening of a particular event, there appears to be pattern i.e a proceeding is initiated or activated by a party when the other party gets a clear upper hand and/or an advantage against the other either by getting a favorable ruling or benefit from the ruling or some other event. As noted earlier, the parties have filed complaints for the most petty issue which in the normal tempo of life and course of things would not have been done.



The disputes and criminal prosecutions seem to be counter blast or counter criminal prosecutions, filed to counter balance the scales in respect of prosecutions filed against each other.

Conclusion

74) This Court is mindful of the fact that, the inherent power under Section 482 of the CrPC cannot be used for a detailed appreciation of evidence. This Court, while exercising power under Section 482 CrPC, would not be justified in entering into the arena of an enquiry to find out as to whether the evidence in question is reliable or not. But at the same time, if one keeps in mind the fine distinction between a case where there is no legal evidence at all or where the evidence is prima facie inconsistent with the malicious and mala fide accusation made and a case where there is legal evidence which may or may not support the case of the prosecution at the time of trial.

75) It is settled principle of law that while exercising jurisdiction of Section 482 of the CrPC the Court is not expected to evaluate the evidence or conduct a mini trial as is enunciated by the Hon'ble Supreme Court in the case of *Manik B. V/s. Kadapala Sreyes Reddy & Anr.*, reported in 2023 SCC OnLine SC 2540, and *Central Bureau of Investigation V/s. Aryan Singh*, reported in (2023) 18 SCC 399 and *State Vs. M. Maridoss and Anr* (2023) 4 SCC 338. At the same time, the observations of the Hon'ble Supreme Court in paragraph 30 in case of *Mohammad Wajid and Anr. Vs. State of Uttar Pradesh and Ors. in Criminal Appeal No.2340 of 2023* also



are extremely important and it is necessary that the same be considered in cases where the contention of malafides and vexatious litigation has been raised and argued.

76) While exercising the powers under Section 482 of CrPC, the Court is duty-bound to ensure that the criminal courts or the criminal law system of a country should not be used as a weapon of harassment or an arm-twisting tactic. The underlying object, the surrounding/attending circumstances are more so required to and ought to be considered and taken into account when a case of malicious or vexatious prosecution or vendetta litigation is alleged and when is borne out by the facts of the case. While exercising the powers under Section 482 of the CrPC, one must keep in mind the purport and the contours of the power available under the section whose ultimate object is to prevent the abuse of process of law and ensure that the ends of justice are met. It is well settled that, the concept of securing ends of justice or preventing the abuse of process of law is at all times larger and includes within it the ends of mere law through which justice is administered. When proceedings are manifestly attended with mala fide or maliciously instituted with ulterior motives for wreaking vengeance, the exercise of power under Section 482 of CrPC should be immediate and the same should be exercised after considering the entire factual background and the attending circumstances. Such cases and circumstances are an exception to the rule that limits the power to be exercised under Section 482 of the CrPC. In such peculiar circumstances, it



is the duty of the Court to visit each circumstance with extra care, caution and a balanced judicial approach is required.

77) While exercising the powers under Section 482 of the Code of Criminal Procedure, this Court now also requires to be mindful of the recent worrying tendency of the parties to multiply cases, which are used as a bargaining tool to bring about a favourable and lucrative settlement. In the recent times, the strategy of arm twisting by instituting multiple cases, exaggerated criminal complaints for seeking a global settlement or getting lucrative settlements has increased manyfold. The courts exercising the jurisdiction under Section 482 of the CrPC are flooded with such cases which encroach into the time that would have been available for genuine cases. The courts, therefore, have to be extremely careful in cases related to matrimonial disputes, financial disputes interlinked with matrimonial disputes, case of sexual offences against women like assault, rape, outraging the modesty of women, POCSO cases, etc. which are also linked with matrimonial disputes. The criminal law system is heavily misused by parties at their own convenience and used as a defense mechanism or for mounting a dishonest attack. When the criminal laws and criminal justice system is misused it involves serious consequences. The consequences have a far reaching impact on the individual, his social standing and well being. To live with a stigma and burden of a criminal prosecution is extremely difficult, and to live with a vexatious and malicious criminal prosecution would be disastrous. Such prosecutions are required to be obliterated at



the inception once a case of malicious prosecution and malafide is prima facie made out. In such cases the prosecution cannot be allowed to continued.

78) On the basis of such unrelated and exaggerated versions and evidence to allow this kind of serious and grave criminal prosecutions to be filed and/or continued, which essentially arise out of matrimonial disputes and financial issues ought not to be permitted. Allowing such criminal prosecutions to continue after such material is available on record would clear amount to a gross abuse of the process of law and harassment to the individual which is metted out due to personal vendetta and grudges and only with an object to spite the individual and wreck vengeance. In my considered view it would be nothing less than pure injustice and a sheer abuse of process of law and the legal system to permit this kind of prosecution to proceed any further.

79) In the present cases, it prima facie appears that the allegations are made only to wreak vengeance and spite the individual. The conduct of the parties and their actions have shocked and shook the conscience of this Court. The parties have initiated or encouraged the worst kind of prosecution against each other. A child is also not spared. A child who gives birth to a mother has been set up to give the mother a slow and gradual death in the eyes of the society at large. A wife has set out on a path of evident malice and misrepresentation by filing criminal prosecutions against the husband and the family on the basis of allegations which are



contrary to each other and self destructive. All of this at the cost of the present and future generations and for certain personal issues which are perhaps given more than required importance and priority. The parties, in the zest and over zealousness to implicate each other have lost sight of the realities of life.

80) In my opinion, continuation of the present criminal proceedings would lead to manifest injustice and would amount to a clear abuse of the process of law and misuse thereof. The facts of the present cases as narrated hereinabove, warrant that the inherent powers of this Court under Section 482 of CrPC be exercised to prevent the abuse of process of law and to secure the ends of justice.

81) Considering the aforementioned facts, submissions and the law as laid down by the Hon'ble Supreme court, I am inclined to quash the present proceedings. This would be a fit case to invoke the inherent powers of this Court under the provisions of Section 482 of the Code of Criminal Procedure to quash and set aside the criminal proceedings in the interest of justice and to prevent the abuse of the process of law. Considering the entirety of the facts, in my opinion, 'X' and Petitioner have clearly made out a case under category 5 and 7 of the categories mentioned by the Hon'ble Apex Court in the case of *State of Haryana and Ors. Vs. CH. Bhajan Lal and Ors. (Supra)*.

82) In view of the aforesaid facts and circumstances, the following



Order is passed:-

- i) Criminal Application No. 427 of 2023 is allowed in terms of prayer clause (a).
- ii) Criminal Writ Petition No. 2768 of 2021 is allowed in terms of prayer clause (a).
- iii) Criminal Writ Petition No. 3379 of 2022 is allowed in terms of prayer clause (a).
- iv) Rule is made absolute accordingly in the aforesaid Application and Petitions.

83) It is clarified that, observation made herein pertain to the three criminal prosecutions which have been considered and dealt with by this Judgment and are only restricted for the purpose of deciding the present Application and Petitions. The observation herein should not be considered or construed to constitute any observation on the merits of any connected or related matter. The concerned authorities/trial Courts shall proceed with the connected proceedings in accordance with law, uninfluenced by any observation made in this Judgment.

83) Traditionally, this Court has at all times suggested and tried to ensure and endeavor that family ties and peace are restored, or at least ensure that inter se family disputes and issues are amicably resolved. In the present case also, suggestions were made to the parties to amicably resolve the issues. The mediation process, though initiated, has failed. The suggestions of settling and resolving all the issues, though discussed, did



not yield any positive result. Going forward, it is in the best interest of the parties and the daughters, and for their future life and endeavors, that the parties amicably resolve all matrimonial disputes and financial issues.

(RANJITSINHA RAJA BHONSALE, J.)

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