A.F.R.

IN CHAMBER

Case :- CRIMINAL REVISION No. - 1126 of 2022

Revisionist :- Mukesh Bansal
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Rajeev Nayan Singh,Ritukar Gupta,Vinod Prakash Srivastava (Senior Adv.)
Counsel for Opposite Party :- G.A.,Raj Kumar Kesari

With

Case :- CRIMINAL REVISION No. - 1187 of 2022

Revisionist :- Manju Bansal
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Rajeev Nayan Singh,Ritukar Gupta,Sr. Advocate
Counsel for Opposite Party :- G.A.,Raj Kumar Kesari

With

Case :- CRIMINAL REVISION No. - 1122 of 2022

Revisionist :- Sahib Bansal
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Ritukar Gupta,Rajeev Nayan Singh,Vinod Prakash Srivastava (Senior Adv.)
Counsel for Opposite Party :- G.A.,Raj Kumar Kesari

Hon'ble Rahul Chaturvedi,J.

[1] Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Rajiv Nayan Singh and Sri Ritukar Gupta learned counsel for the revisionists, Sri Raj Kumar Kesari, learned counsel for opposite party no. 2 and learned A.G.A for the State.

[2] Pleadings have been exchanged between the parties in all the above captioned revisions and as such, all the matters has ripe for final submissions to be adjudicated on merits.

[3] Coincidentally, all the aforesaid three revisionists, are assailing the legality and validity of the order dated 03.03.2022 through their respective revisions mentioned above whereby learned Additional Sessions Judge (Fast Track Court-I), Hapur, by three different orders of the same date i.e 03.03.2022, have rejected all the discharge applications of the revisionists under section 227 Cr.P.C. in S.T. No. 19 of 2020 (State v. Manju Bansal and others) arising out of Case Crime No. 567 of 2018, under sections 498-A, 504, 506, 307 and 120-B IPC and ¾ of the Dowry Prohibition Act, P.S. Pilakhuwa, District Hapur.

Since, order dated 03.03.2022 has been passed on three different applications in the same Sessions Trial, therefore, for the sake of brevity and convenience, all the aforesaid three revisions are clubbed together and decided by a common judgement by this Court.

FACTS OF THE CASE & SUBMISSIONS BY THE COUNSEL FOR THE REVISIONISTS:-

[4] As per prevailing practice nowadays in the society mostly in the cases of matrimonial discord, misunderstanding and incompatibility between the married couples, results into ever abhorring FIR. Here too, it seems to be a repetition of the same practice. In the instant case, the FIR was lodged by none other than the wife Ms. Shivangi Bansal herself against her husband as well as her in-laws. From the perusal of the FIR, it is borne out that for the incident of 04.10.2018, the present FIR came into existence on 22.10.2018 lodged at Police Station-Pilkhua, District-Hapur(native place of Ms. Shivani Bansal) against five named accused including husband and his relatives. In addition to above named accused persons, two more namely Chirag Bansal brother-in-law(devar) and Smt. Shipra Jain, married sister-in-law(nanad) were also roped in these offences. From the text of the FIR, following salient factual features of the case are

apparent :-

[5] The written complaint signed by the informant Ms. Shivangi Bansal was sent to the office of the Prime Minister, Government of India, Chief Minister, State of U.P., Police Commissioner, New Delhi, D.G.P. Lucknow, Superintendent of Police, Hapur and Circle Officer, Police Station-Pilkhua, District-Hapur with the allegations that opposite party no.2 Ms. Shivangi Bansal was married with Sahib Bansal on 05.12.2015 according to Hindu rites and rituals. It seems that there was a deep rooted misunderstanding, and thorough incompatibility and discord between husband and wife, in fact, both of them were fierce-foe of each other.

[6] It is alleged that in the marriage, her parents have spent about Rs.2 crores in the shape of cash, jwellery, clothing, utensils, furniture and other gifts worth Rs.50 lacs. But, all the above named five persons were not happy by the aforesaid dowry and were demanding Rs.20 lacs more as an additional dowry which later on swelled to the figure of Rs.50 lacs. It is alleged that (a) the informant's father-in-law Mukesh Bansal wanted to have sexual favours from opposite party no.2 and not only this, her devar Chirag Bansal also have tried to ravish her physically. (b) The husband-Sahib Bansal used to lock her in the bathroom after taking away her mobile phone.(c) When the informant got pregnant, then they asked some astronomer to predict the sex of 'still born' baby. Then, her mother-in-law and sister-in-law pressurized her to get aborted. On making refusal, all the family members became physical with her. (d) During the stage of pregnancy, her husband tried to establish sexual relationship per-force. Not only this, he tried to have unnatural and oral sex and even, pissed in her

mouth. (e) There was constant demand of additional dowry and on refusal by opposite party no.2 to oblige them, she was assaulted brutally by fists and kicks and maltreated and humiliated to its optimum.

[7] On 03.04.2017, Mukesh Bansal, (father-in-law) tried to distance with the warring couple and they shifted to some other rented accommodation, leaving behind the husband & wife to 130, First Floor, Rajdhani Enclave, Pithampura, New Delhi. In the month of September, 2017, when the informant was impregnated for the second time, the family members got her aborted in 2017 itself. On 03.10.2018, there was again demand of additional dowry of Rs.50 lacs and again on refusal, her husband attempted to strangulate her by 'chunni' and to further humiliate her, got her head into the commode of the toilet. On 04.10.2018, she dialed '100' and thereafter, gave written *tehrir* to A.S.P., Women Cell, New Delhi and then, left the company of her husband and returned to her place at Hapur.

[8] The story narrated in the FIR is not only abhorring, full of dirt, filth and venomous accusations where the informant fiercely abused her own husband and in-laws by using all the ways and means in the tone, tenor and texture in the extreme manner. The graphic and vivid descriptions of the incident without any shame or hitch of any sort which, speaks out volume of mental condition and amount of venom and poison in the mind of the informant. She without mincing any word, rather exaggerating the incident to manifolds, had vomitted the snide before the Court. Interestingly, general and sweeping allegations have been fastened against all the family members for committing sodomy, attempt to rape and illegal abortion etc. upon all the family members with special focus upon her

husband, Sahib Bansal.

[9] As such, it is clear that the couple Sahib Bansal and Shivangi Bansal was married in December, 2015. Parents-in-law of the informant withdrew themselves from the company of their son and daughter-in-law keeping in view the growing acrimony between them and started residing to some other place in a rented accommodation. Thus, in-fact Mukesh Bansal and Smt. Manju Bansal(parent-in-law) remained in the company of warring Sahib Bansal (son) and daughter-in-law Shivangi Bansal, for almost one year and four months only and in order to achieve larger good, they came out silently from the lines of their son and daughter-in-law with hope and trust that bitterness between them would be diluted and the relationship between them would congenial.

[10] Learned counsel for the revisionist drew attention of this Court to GD Entry 027-A dated 04.10.2018, a call received by PCR that, in House No. 130 First Floor, Rajdhani Enclave, Peetampura, New Delhi, the husband is beating his wife. On 04.10.2018 at 10.10 P.M. an endorsement was made to the Police personnels, after meeting Ms. Shivangi Bansal, it was disclosed that the informant got married with Sahib Bansal about three years back, who constantly used to tease, beat and assault her for additional dowry. Thereafter, Ms. Shivangi Bansal after collecting her belongings along with her daughter's clothes and toys, proceeded to the house of her father Rajesh Goyal and mother-Sandhya Goyal at Pilkhuwa, Hapur. She has also given a handwritten application, enclosing a photostat copy of her complaint filed in the office of ACP, Women Cell, Rani Bagh, New Delhi and then proceeded to Pilakhuwa, District Hapur. On the same breath, she made similar allegations that her husband made demand for

additional dowry of Rs. 50 Lacs and sought sexual favours in the shape of anal and oral sex and various other cruel acts of sex. She has also reiterated all the versions of the FIR in this application too. In the same application, she, in no uncertain terms, have stated that *"I do not want to live with him(husband)." "I am not physically hurt." "I am not going for medical examination."* It is crystal clear that despite all allegations of marpeet, she has made a candid statement that she was not physically assaulted, therefore, does not want to undergo any medical examination. On the same date, husband-Sahib Bansal also gave a detailed application with the allegation, exploiting the ugly situation that Shivangi Bansal has demanded Rs.5 crore else she would make the life of Sahib Bansal(husband) and his family members miserable like hell. The detailed application running into five pages is at Page-54 onwards of the affidavit.

[11] Interestingly, by giving application on 04.10.2018 as mentioned above, Shivangi Bansal categorically denying any physical assault upon her by her husband and she does not want to get herself medically examined. On the other hand, she appeared before the police on 22.10.2018 to get herself medically examined in C.H.C. Hapur wherein the doctor in the medical report, has candidly mentioned that she has sustained no injury on her person, annexure-3 to the petition.

However, in the counter affidavit filed by learned counsel for the opposite party no.2 and injury report issued by Bhagwan Mahavir Hospital, Pitampura, New Delhi dated 04.10.2018 at 9:11 pm is annexed whereby, it discloses certain injuries over her persons. It is alleged that these injuries were sustained by her husband who was present at his flat. She has made a complaint to the doctor that she was assaulted by her husband who tried to strangulate her

and she made a complaint of pain around her neck and also nausea and vomitting. The condition of the patient was conscious and oriented and making a physical investigation, the doctor has opined that there is linear transverse bruise seen over lateral part of the neck. There is small burn sign seen at left forearm and tenderness in the backside. Thus, in totality, it is alleged that the husband had tried to strangulate her by a scarf resulting into a bruise over the neck. Except this, there is no vital injury over her person. Thus, it is quite clear that the instant is a no injury case wherein the informant has sustained a single scratch over her person and so far as strangulating her neck by chunni is concerned, there is sign and mark of struggle over her neck suggestive of the fact that husband has made an effort to gag her neck.

[12] The police, after probing the matter in depth, has submitted the charge sheet dropping all the offences, wherein the informant had made wild accusations in the FIR against her husband and his family members. The aforesaid charge sheet has been filed only under sections 498A, 323, 504, 506, 307 IPC and ¾ of D.P. Act. Thus, it is explicitly clear that the FIR is nothing but a virtual canard and full of venom where the informant unmindful of the fact to its far-reaching repercussions, pasted all the filth upon revisionist in wild manner but was unable to produce any documentary evidence/proof to substantiate the levelled allegations and thus, all the sections of unnatural/oral sex, forcible abortion have gone to haywire resultantly dropped from charge sheet. Not only this, names of Chirag Bansal and Ms. Shipra Jain finds no place in the charge sheet, so filed by the police.

[13] It is also relevant to point out here that under the auspices of Hon'ble

the Apex Court and this Court as well, the matter was referred twice for mediation and conciliation proceeding so as to sort out and patch up the matter outside the court in an amicable way. But, unfortunately its ultimate result was a big zero. The parties failed to avail the advantage of the opportunity offered by the Apex Court as well as this Court. Eventually, after getting themselves bailed out from the court concerned, the husband Sahib Bansal, Mukesh Bansal, father-in-law, and Manju Bansal, mother-in-law moved the different discharge applications and vide order dated 03.03.2020, all the three applications stood dismissed by the learned sessions Judge, Hapur. On this factual backdrop of the case, the present three different revisions have been tabled before this Court by Sahib Bansal(husband), Mukesh Bansal(father-in-law) and Manju Bansal(mother-in-law).

[14] This Court has perused the order impugned and the submissions advanced by the respective parties and the grounds taken by the learned counsel for the revisionists, is that the order impugned passed by the court below which was canvassed as an illegal, perverse and without application of judicial mind, besides, it is a misuse of the procedure of the court.

[15] It is further urged by learned counsel for the revisionist that so far as Mukesh Bansal and Manju Bansal are concerned, they are parents-in-law of the opposite party no.2, informant who got married in December, 2015 with the son, Sahib Bansal. They remained in the company of the son and daughter-in-law upto 30.04.2017, to be precise 1 year, 4 months and 25 days from the date of marriage. During this, they repeatedly tried to pacify and get the rifts patched up but sensing that situation, heated up from bad to worse, they themselves decided

to resile from the company of their son and daughter-in-law and started to reside in a distant place i.e. 44, Kapil Vihar, North-west, Delhi, a rented accommodation. Thus, from 30.04.2017, the physical presence of the old and pained couple from the site of the plagued situation on the place of said occurrence is completely cut off. The opposite party no.2 is a furious lady who wants to level the score with her husband as well as in-laws and the tone, texture and tenor of the FIR speaks volume about her mental condition. Her psyche and amount of venom in the mind of the informant goes to show that in order to take revenge from her husband and in-laws, she has gone to any extent, crossing all the limits of decency. On making an inquiry, except one small bruise over her neck, there is no other scratch over her person. The injuries shown may or may not touch the four corners of Section 307 IPC only against her husband who was residing with her at relevant point of time. On top of it, it has been contended by learned counsel for the revisionist that it is true, that there are certain specific allegations against the husband who resides with opposite party no.2 in the same flat and it is just possible that relationship between the husband and wife may be sore but so far as parent-in-law are concerned, they are out of canvass since 30.04.2017. The parent-in-law and other family members are roped in just because they are the parent, brother and sister of the husband-Sahib Bansal.

Lastly, learned counsel for the revisionist has drawn the attention of the Court to the allegations of the FIR whereby it is mentioned that parents of the informant spent Rs.two crores on her marriage and has given gifts worth Rs.50 lacs.

Learned counsel for the revisionist has drawn the attention of the Court to the annexure 3 and 4 of the rejoinder affidavit which are Income Tax Return of the opposite party no.2. The ITR of assessment year of 2014-15 shows

that Shivangi Bansal has a gross total income of Rs.2,24,542/- whereas in the year 2015-16, she has shown her gross total income of Rs.2,75,246/- whereas her father's ITR of 2015-16, 2016-17, gross total income is Rs.3,53,693/- and Rs.5,54,772/- respectively and after having deduction, the total income was Rs.3,85,500/-. Their financial health on which they have given tax, clearly indicates their financial status and to suggest that the amount of Rs.2 crore was spent in the marriage and gifts of Rs.50 lacs were given, is simply cock and bull story. The informant has mentioned astronomical figures without any basis for which she is required to give a reasonable justification. The ITRs of father and daughter indicates that both of them belongs to upper middle-class, a well-to-do businessman.

[16] Thus, in the instant revision, judicial scrutiny of order dated 03.03.2022 passed by the Additional District and Sessions Judge/F.T.C.-I, Hapur is required to be done by this Court.

[17] Section 227 of Cr.P.C. has to be read with Section 228 of the Code of Criminal Procedure is indeed precious safe-guard for the defence to have a pre-battle protection conferred by the legislation under chapter XVI of Cr.P.C. There is no provision which empowers the Magistrate to discharge the accused. This extra-ordinary power can only be exercised by the trial Court and not by the Magistrate for the offences which are exclusively tried by the Court of Sessions itself. It is settled law that charge sheet constitute prima facie evidence constituting the offence for the proceedings and it is only the learned trial Judge after assessing the material on record and after affording the opportunity of hearing to the contesting parties, framed charges against the accused persons. Prior to this, the avenue has been created by the legislation giving a weapon of

discharge in the hands of accused so as to rely upon the material collected by the police during investigation and citing the loopholes and pitfalls in the prosecution story and the material collected by the Investigating Officer of the case during investigation, and after assessing those materials collected during investigation and critically examined them, if the court finds that there is no sufficient or confidence generating material collected in the investigation, the trial court well within its power to discharge the accused and record the reasons for doing so.

In the instant case, except a typical sweeping remark by the informant and her parent that entire family used to harass her for the additional dowry of Rs.20 lacs or Rs.50 lacs ?? Thereafter, the applicant and his son Chirag Bansal used to seek sexual favours from her, putting her head in the commode, pissing in her mouth, all these are nothing but exaggaration and magnifying the incident to thousands fold for obvious reasons and purpose. Learned trial Judge ought to have weighed entire material on record specifically the fact that the Mukesh Bansal and his wife since 30.04.2017 are out of scene and they have got feeble reason or occasion for them to demand additional dowry.

[18] For the purpose of determining that whether there is sufficient ground for proceeding against the accused, the Court assess compartively wider discretion in exercise of which it can determine the question, whether the material on record, if undisputed is such on the basis of which conviction can be of such reasonable possibility. Only the prima facie case is to be seen whether the case is beyond reasonable doubt or not, cannot be assessed at this stage. If the Court comes to the conclusion that the commission of the offence, is probable consequence, prima facie case of framing charge exist then the charges would be

framed. At the stage of framing the charge, probative value of materials cannot be gone into. The basic underline idea behind section 227 and 228 Cr.P.C. is to ensure that the court should be satisfied that the accusation made against the accused is not frivolous and fictitious but on the contrary, some material for proceeding against the named accused persons.

[19] It would be hazardous to act upon the discrepancies in the material collected during investigation unless they are so apparent and glaring as to adversly affect the credibility of the prosecution case in its totality, without affording the reasonable opportunity to the prosecution to substantiate the allegations. The only prima facie case is to be seen while assessing all the facts and circumstances, materials collected during investigation, strict standard or proof while evaluating the material to ascertain, whether there is prima facie case against the accused or not.

Sri Srivastava, learned Senior Counsel appearing on behalf of the revisionist in order to buttress his submissions, has relied upon the celebrated judgment of Hon'ble the Apex Court in the case of ***State of Karnataka Vs. L. Munishwamy and others*** reported in ***1977 AIR 1489,*** paragraph nos.7 and 8 of which are quoted hereinbelow :-

> *“The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legiti- mately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says. the learned counsel, the case must go on and the High Court has no jurisdiction. to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept.*
> *-Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:*
>
> *"If, upon consideration of the record of the case and the documents submitted there- with, and after hearing the submissions of the accused and the prosecution in this be- half, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*
>
> *This section is contained in Chapter XVIII called "Trial Before a Court of Sessions". It is clear from the provi- sion that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to*

be re- corded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is of is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.....

Let us then turn to the facts of the case to see, wheth- er the High Court was justified in holding that the proceed- ings against the respondents ought to be quashed in order to prevent abuse of the process of the court and in order to secure the ends of justice. We asked the State counsel time and again to point out any data or material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respond- ents with the crime, howsoever, skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reason- ably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is, that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. we have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the respondents on the basis thereof is that they used to meet one another frequently after the dismissal of accused No. 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed."

[20] Hammering further, learned Senior Counsel, Sri Srivastava has relied upon the recent judgment of Hon'ble the Apex Court in the case of ***Sanjay Kumar Rai Vs. State of Uttar Pradesh and another*** reported in ***2021 AIR(SC) 2351*** in which three Judges Bench of the Court has pointed out and underlined need of Discharge in the Cr.P.C., paragraph no.16 of which is quoted hereinbelow :-

"16. Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office or mouth piece to the prosecution. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. ***[Union of India v. Prafulla Kumar Samal]****. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be. "*

[21] In this regard, there are two earlier celebrated judgment of Hon'ble the Apex Court on the issue of Discharge i.e. (i) ***Union of India Vs. Prafulla***

Kumar Samal reported in ***1979 3 SCC 4*** ; (ii) ***Dilwar Balu Kurane Vs. State of Maharashtra*** reported in ***(2002) 2 SCC 135.*** In ***Prafulla Kumar Samal's case***, scope of Section 227 of Cr.P.C. was considered and after adverting to various judgments, the Court has enumerated following principles :-

> *(i) The Judge while considering the question of framing the charges under section 227 of the Code has the undoubted powers to sift and weigh the evidence for the limited purpose of finding out whether or not, a prima facie case against the accused has been made out.*
>
> *(ii) Where the materials placed before the Court disclose "grave suspicion" against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(iii) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

[22] Similarly, in the case of **Dilawar Balu Kurane (supra)**, the principle enunciated in **Prafull Kumar Samal case** has been reiterated as held that the jurisdiction under section 227 of the Cr.P.C., "Judge which under the present Code, an experience Court, cannot act merely as a postoffice or a mouthpiece of the prosecution but has to consider the broad prababilities of the case, the total impact of the evidence and the documents produced before the court, the basic infirmities appearing in the case and so on. It is however, does not mean that Judge should make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he is conducting a trial. The Court is not required to hold a mini-trial at the state of Discharge.

[23] After evaluating the material and various case laws discussed in the

judgment of ***Sajjan Kumar VS. Central Bureau of Investigation***, reported in ***2010 (9) SCC 368*** Hon'ble the Apex Court has broadly formulated the parameters to be exercised while dealing the case under section 227 and 228 of Cr.P.C. Paragraph no.17 of the aforesaid judgment is quoted as under :-

> *"17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.*
> *On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-*
>
> *(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
>
> *ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
>
> *iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
>
> *v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
>
> *vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
>
> *vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

Toing the similar lines in recent judgment of ***Tarun Ji Tejpal Vs. State of Goa*** reported in ***(2015) 14 SCC 481***, same ratio has been reiterated as in the case of Sajjan Kumar's case(supra).

[24] Now, coming to the precise question involved in the present case has to level the omnibus allegations of dowry related harassment of all the family members connected with the husband in recent judgment of Hon'ble the Apex

Court in the case of ***K. Subba Rao Vs. State of Telangana*** reported in ***2018 (14) SCC 452*** , it was observed by Hon'ble the Apex Court that the Court should be extremely careful and vigilant in proceeding against the distant relative of the husband in the crimes pertaining to the dispute even in dowry deaths. All the relatives of the husband should not be roped in on the basis of omnibus allegations unless Specific Instances of the involvement in the crime as alleged and surfaced during investigation with materials certainty. The sweeping and general allegations are very frequent now-a-days and if such people are put to trial on such a casual and omnibus allegations, it would bound to lead the disastreous result and unwarranted hardships to those persons.

In the instant case where her in-laws Mukesh Bansal and Manju Bansal remained in the company of their warring son and daughter-in-law barely for one year and four months and 25 days, left their company on 30.04.2017. Since, thereafter, the affair is between son and the victim alone. In addition to this, in their respective statement under section 161 Cr.P.C., a casual and sweeping allegations were fastened against them also when they are not in position to demand any additional dowry. It was further argued that victim priot to 03.10.2018, has not made a single whisper regarding dowry relatedd harassment and atrocities upon her by her parent-in-law. Then, the court has got no reason to presume that the in-laws were also active participants in extending dowry related harassment from the distance. It is urged by learned counsel for the revisionist that obnoxious allegations are motivated one, driven by a sheer retaliation without any iota of any sanctity to it.

Sri Srivastava, learned Senior Counsel also relied upon the latest judgment of Hon'ble the Apex Court in the case of ***Kahkashan Kausar@Sonam***

Vs. State of Bihar in ***Criminal Appeal No.195 of 2022 decided on 01.02.2022***, following observations were made by the Apex Court :-

> *"18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them."*

SUBMISSIONS ADVANCED BY OPPOSITE PARTY NO.2 :-

[25] Per contra, Sri Raj Kumar Kesari, learned counsel for the complainant has drawn the attention of the Court to the 161 and 164 Cr.P.C. statements of the victim annexed as Annexure-4 to the revision. The most interesting feature of the entire counter affidavit is that there is not a single averment in the entire affidavit which is dedicated exclusively to parent-in-law Mukesh and Manju Bansal. As usual, vague and sweeping allegations are made not only in the FIR but also in the averments of the counter affidavit qua her parent-in-law.

[26] I have perused the statement carefully. Being the youngest among the children of Rajesh Kumar Goyal and Sandhya Goyal, opposite party no.2 completed her B.Com Hons. from Sri Ram College of Commerce, New Delhi University. She is aged about 28 years and got married with Sahib Bansal on 05.12.2015. Besides Mukesh Bansal and Manju Bansal, she has included Chirag Bansal, unmarried devar and Shipra Jain, married nanad(sister-in-law). The couple were blessed with daughter Raina Bansal. The date of incident is 03.04.2018 and from the 161 Cr.P.C. statement, its questionaire and 164 Cr.P.C. statement, it is abunduntly clear that on the fateful day, oppposite party no.2 along with her husband and Raina Bansal were at the residence residing at 130, First Floor, Rajdhani Enclave, Pitampura, New Delhi. So far as parent-in-law are

concerned, she states that her devar chirag also resides with her parent-in-law at Kapil Vihar, Pitampura, New Delhi. Both of them are in distinct domestic and separate entity on 30.04.2017. She has made severe allegations of assault and unnatural sex with her upon her husand and in this questionaire, she had made completely sweeping allegations of having sexual favours upon her own father-in-law and brother-in-law on unspecified date and time. Though, she has levelled omnibus allegations of demanding additional dowry upon all the named accused persons. In addition to this, there was also accusation with regard to forcible abortion and second time pregnancy. But its accusation got flat when the Investigating Officer inquired from Dr. Amita Agrawal, her Gynechologist who in no uncertain terms, gave the statement to the I.O. of the case that the second abortion was made on her own acceptance and willingness. There was nothing like forced abortion. However, in her statement, learned counsel for the complainant has tried to defend the orders of learned Additional Sessions Judge, Hapur that in parcha no.17, the statement of Rajesh Kumar Goyal and Sandhya Goyal was recorded in which they stated that both of them also demanded additional dowry and became physical with her on this score.

LEGAL DISCUSSION:-

I have perused the order impugned passed by Additional Sessions Judge, Fast Track Court, Hapur dated 03.03.2022 and while rejecting the discharge application, it has been mentioned :

> *"Case Diary ke parcha no.17 par gavahan Rajesh Kumar va Smt. Sandhya Goyal ke bayan antargat 161 Cr.P.C. me abhiyukt dwara pidita ke sath dahej ki maang ko lekar marpeet ki gayi aur pidita k sath Sahib va saas va sasur dahej ki maang karne ka kathan kiya hai. Vivechak dwara vivechana ke dauran ekatrit kiye gaye sakshyo ke aadhar par, prarthi/abhiyukt Mukesh Bansal ke virudh antargat dhara 498-A, 323, 504, 506, 307, 120B IPC va 3/4 D.P. Act me aarop patra preshit kiya gaya hai |"*

It is indeed an unfortunate that the learned trial Judge has

consciously ignored the plethora of evidence collected by the I.O. during investigation that Mukesh Bansal and his wife are residing separately since 30.04.2017 and they have got no occasion to demand additional dowry. Moreover, at some places, there is demand of Rs.20 lacs and at some place, it has been swelled to Rs.50 lacs ??? In addition to this, there is general and sweeping allegation without any material particulars of demand of dowry by the parent-in-law makes the entire prosecution story a doubtful and revengful proposition. Still, the learned Sessions Judge has picked up few lines in 161 Cr.P.C. statement ignoring the rest of the averments and material caste a serious expulsion upon the order impugned.

[27] Learned counsel for the complainant in his counter affidavit has annexed the injury report of the complainant dated 04.10.2018 by making a mention that she was examined on the date of incident by Bhagwan Mahavir Hospital, Pitampura, New Delhi with the report that physical assault has been made by her husband and had tried to strangulate her as told by the patient. But surprisingly, in the entire counter affidavit, except making a mention that “since at the time of marriage”, the revisionist and all the family members were demanding dowry continuously, there is nothing special indicting the parent-in-laws in this offence. It is further most important to mention that Mukesh Bansal and Manju Bansal had left the company of her son and daughter-in-law on 30.04.2017 itself and residing in a separate accommodation as independent domestic unit and therefore, there is no chance of any interference in the matrimonial or personal matter of Sahib Bansal and Shivangi Bansal.

[28] I have perused the 161 Cr.PC. Statement of the witness Neha(aunt of

Shivangi Bansal), Shweta(Aunt), Anand Prakash, family acquaintance, Chandra Mohini Goyal, independent witness, Vinay Agrawal, independent witness, Sri Bhagwan, Vina Jain. None of these witnesses in their respective 161 Cr.P.C. statements, even whispered against the parent-in-law for their alleged act of misbehaviour on account of additional dowry and seeking sexual favours from their daughter-in-law.

In our traditional Indian family, where they are residing in a joint family with unmarried son, it is highly improbable and difficult to digest the allegations of demanding sexual favours from her daughter-in-law by father-in-law or brother-in-law. The stray and tangent allegations of demanding dowry by father-in-law and mother-in-law would not bring them within four corners of Section 498-A IPC and keeping in view the ratio laid down by Hon'ble the Apex Court in the case of ***Sajjan Kumar(supra) and Kahkashan Kausar@Sonam*** and assessing them with the facts of the present case, I find that the order of learned trial Judge is well short of standards enumerated in the aforesaid case, so far as it relates to Mukesh and Manju Bansal.

No doubt, Sahib Bansal, being the husband and the allegations are clearly against him for committing marpeet, atrocities and treating her in inhuman way, the Court is not in a position to make any comment either ways. But since, he was residing with opposite party no.2 at the relevant point of time, his complicity in the commission of offence cannot be ruled out altogether.

[29] *Hence, considering the facts and circumstances of the case, the present revision with regard to Mukesh Bansal and Manju Bansal is hereby* ***allowed*** *for the reasons enumerated above and the order impugned dated 03.03.2022 is hereby set-aside. So far as husband-Sahib Bansal is concerned, the revision relates to him is* ***dismissed*** *and he is directed to regularly and faithfully appear before the court*

concerned and contest the trial to its logical conclusion.

ROLE OF ADVOCATES WHILE DEALING WITH MATRIMONAL MATTTERS AND LANGUAGE OF THE F.I.R./COMPLAINT

[30] Yet coming to another aspect of the issue which is disturbing and mind-boggling to the Court. After reading the FIR allegedly lodged by Ms. Shivangi Bansal after 18 days of the incident, which is ever-abhorring, full of dirt and filth. The graphical description portrayed by her in her FIR is deplorable to be condemned in its strongest terms. The FIR is the place where the informant gives the story mobilizing the State Machinery engaging in the commission of cognizable offence. It is not soft porn literature where the graphical description should be made. Hon'ble the Apex Court in its judgment in the case of ***Priti Gupta Vs State of Jharkhand, 2010(71) SCC 667*** has fastened the liability upon the counsels, paragraph nos.30, 31, 32 and 33 are quoted hereinbelow :-

> *"30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*
>
> *31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.*
>
> *32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*
>
> *33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration*

> *while dealing with matrimonial cases.* 34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.
>
> *35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society."*

[31] Therefore, the Court is of the opinion that while deciding the present issue, the Court should not take into these graphical description of the accusation made by the complainant and simply over-look these graphic and distressful allegations made by a lady who after receiving legal advice, pasted those dirt and filth upon her husband and other family members. The interesting feature is that she has been unable to substantiate those allegations even at the time of investigation and these allegations were found false and the sections related to it were dropped.

The Court records its strongest exception to such type of language used by the informant. The language of the FIR should be decent one and no amount of atrocities faced by the informant, would justify her to use such type of castic expressions. FIR/complaint is the gateway of any criminal case even soft and decent expression would well communicate the alleged atrocities faced by her.

CONSTITUTION OF FAMILY WELFARE COMMITTEES :-

[32] In this connection, there is yet another judgment of Hon'ble the Apex Court in the case of ***Social Action Forum for Manav Adhikar Vs. Union of India*** reported in ***2018 (10) SCC 443***. The Hon'ble Apex Court was aware that Section 498A IPC and its allied sections is mercilessly used by the advocates to serve the objective of their clients and that is why after exaggerating the incident manyfold, tailored an imaginary and abhorring story. This laudable section was brought into the Statute Book in the year 1983. The objective and the reasons for introducing Section 498-A IPC can be gathered

from the Statements of Object and Reasons of the criminal law(Second amendment Act, 1983) which reads thus :-

> *"Increasing graph of dowry death is matter of serious concern. The extent of effort has been commented by the Joint Committee of the House constituted to examine the working of Dowry Prohibition Act, 1961. The cases of cruelty by the husband and other relatives which culminated in the society or murder, hapless women concerned constitute only a small fraction of cases involving the cruelty. It is therefore proposed to amend the IPC, Code of Criminal Procedure and Indian Evidence Act suitably to deal effectively not only with the cases of dowry deaths but also cases of cruelty to married woman by her in-laws".*

[33] However, it has been contended that Section 498A IPC since its introduction, has increasingly deal vilified and associated with the perception and its misuse by the women who frequently used it as a weapon against her in-laws. As the petitioners, though there is general complaint that Section 498A IPC is subject to gross misuse, yet there is no concrete data to indicate how frequently the provision has been misused. Further, the Court by whittling down the stingency of Section 498A IPC is proceeding on an erroneous premises that there is misuse of said provision whereas infact misuse by itself cannot be ground to repeal the panel provision or take away its teeth.

It is question of a common observation that every matrimonial case is being exaggerated manifold with all the pungent and castic allegations dowry related atrocities involving the husband and all family members. This rampant practice now a days has adversaly affecting our social fibre especially in the northern India. In the metro cities, the doctrine of 'live-in relationship' has silently sneaked into our socio-cultural ethos by replacing our traditional marriages by its new modern abrasion in the name of 'live-in relationship'. This is a ground reality and one has to accept it willy-nilly which is nowhere similar to our traditional marriage. It is defined as domestic co-habitation between adult couple who are not married. It is a stress free companionship without any legal obligation, it has many complication, responsibilities and legal liabilities. It is a voluntary agreement in it that unmarried male or female decides to live together in one

roof in a sexual and romantic relationship which seems to be marriage in alternative or substitute to the traditional marriage in which unmarried couple lives together without marrying with each other free from its legal implications, committment and responsibilities. In fact, this is an off shoot of traditional indian marriage just to save the couple from the hazards and legal complications and bickering between them, The two young couples agree to have sexual and romantic relationship. The traditional fragarance of our age-old institution of marriage would completely evapourated over period of time if such gross and unmindful misuse of section 498-A IPC would keep on pasted rampantly.

[34] Thus assesing the totality of the circumstances, object and the allegation of misuse of this piece of legislation in a shape of Section 498A IPC, the Court is proposing the safeguards after taking the guidace from the judgment of Hon'ble the Apex Court in the case of ***Social Action Forum for Manav Adhikar Vs. Union of India (Supra)*** keeping in view the growing tendency in the masses to nail the husband and all family members by a general and sweeping allegations.

[35] Thus, It is directed that :-

*(i) No arrest or police action to nab the named accused persons shall be made after lodging of the FIR or complaints without concluding the "**Cooling-Period**" which is two months from the lodging of the FIR or the complaint. During this "**Cooling-Period**", the matter would be immediately referred to Family Welfare Committe(hereinafter referred to as FWC) in the each district.*

(ii) Only those cases which would be transmitted to FWC in which Section 498-A IPC along with, no injury 307 and other sections of the IPC in which the imprisonment is less than 10 years.

*(iii) After lodging of the complaint or the FIR, no action should take place without concluding the "**Cooling-Period"** of two months. During this "**Cooling-Period"**, the matter may be referred to Family Welfare Committee in each districts.*

(iv) Every district shall have at least one or more FWC (depending upon the geographical size and population of that district constituted under the District Legal Aid Services Authority) comprising of at least THREE MEMBERS. Its constitution and function shall be reviewed

periodically by the District & Sessions Judge/Principal Judge, Family Court of that District, who shall be the Chairperson or Co-chairperson of that district at Legal Service Authority.

(v) The said FWC shall comprise of the following members :-

(a) a young mediator from the Mediation Centre of the district or young advocate having the practices up to five years or senior most student of Vth year, Government Law College or the State University or N.L.Us. having good academic track record and who is public spirited young man, OR;

(b) well acclaimed and recognized social worker of that district having clean antecedant, OR;

(c) retired judicial officers residing in or nearby district, who can devote time for the object of the proceeding OR;

(d) educated wives of senior judicial or administrative officers of the district.

(vi) The member of the FWC shall never be called as a witness.

(vii) Every complaint or application under Section 498A IPC and other allied sections mentioned above, be immediately referred to Family Welfare Committee by the concerned Magistrate. After receiving the said complaint or FIR, the Committee shall summon the contesting parties along with their four senior elderly persons to have personal interaction and would try to settle down the issue/misgivings between them within a period of two months from its lodging.

The contesting parties are obliged to appear before the Committee with their four elderly persons (maximum) to have a serious deliberation between them with the aid of members of the Committee.

(viii) The Committee after having proper deliberations, would prepare a vivid report and would refer to the concerned Magistrate/police authorties to whom such complaints are being lodged after expiry of two months by inserting all factual aspects and their opinion in the matter.

(ix) Continue deliberation before the Committee, the police officers shall themselves to avoid any arrest or any coercive action pursuant to the applications or complaint against the named accused persons. However, the Investigating Officer shall continue to have a peripheral investigation into the matter namely preparing a medical report, injury report, the statements of witnesses.

(x) The said report given by the Committee shall be under the consideration of I.O. or the Magistrate on its own merit and thereafter suitable action should be taken by them as per the provision of Code of Criminal Procedure after expiry of the ***"Cooling-Period"*** *of two months.*

(xi) Legal Services Aid Committee shall impart such basic training as may be considered necessary to the members of Family Welfare Committee from time to time(not more than one

week).

(xii) Since, this is noble work to cure abrasions in the society where tempos of the contesting parties are very high that they would melow down the heat between them and try to resolve the misgivings and misunderstanding between them. Since, this is a job for public at large, social work, they are acting on a pro bono basis or basic minimum honrarium as fixed by the District & Sessions Judge of every district.

(xiii) The investigation of such FIRs or complaint containing Section 498A IPC and other allied sections as mentioned above, shall be investigated by dynamic Investigating Officers whose integrity is certified after specialized training not less than one week to handle and investigate such matrimonal cases with utmost sincerity and transparancy.

(xiv) When settlement is reached between the parties, it would be open for the District & Sessions Judge and other senior judicial officers nominated by him in the district to dispose of the proceedings including closing of the criminal case.

At the cost of repetition, it is made clear that after lodging of the F.I.R. or the complaint case without exhausting the **"Cooling-Period"** of two months, no arrest or any coercive action shall be taken against the husband or his family members in order to derail the proceedings before the Family Welfare Committee.

[38] Let copy of this order be circulated by the Registrar General of this High Court for wide circulation to all the concerned, the Director General of Police, U.P.; Chief Secretary, Govt. Of U.P.; Principal Secretary (Law), Govt. Of U.P. and all the District & Sessions Judges to constitute and establish Family Welfare Committees and make them operational within a period of next three months positively. Let a circular to this effect may be isused by all the concerned authorities attaching utmost sincerity and frame rules for the said purpose within a period of next two months positively.

For the reasons narrated in paragraph no.29 out of three revisions, Criminal Revision No.1126 of 2022 and 1187 of 2022 are hereby **ALLOWED**. Order impugned date 03.03.2022 is hereby quashed with regard to Mukesh Bansal and Manju Bansal respectively and they shall stand discharged from the allegations of Section 498A, 504, 506, 307, 120-B IPC and Section 3/4 of D.P. Act. in S.T. No.19 of 2020 arising out of

case crime no. 567 of 2018 pending in the court of Additional Sessions Judge, F.T.C.-I, Hapur and so far as Criminal Revision No.1122 of 2022 is concerned in Re : Sahib Bansal Vs. State of U.P and anr is hereby **REJECTED.**

Order Date :- 13.6.2022
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