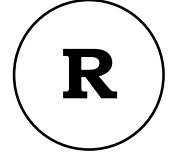


Reserved on : 03.03.2025
Pronounced on : 07.03.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.19567 OF 2023 (GM - RES)

BETWEEN:

MR. DEVENDRA BHATIA
S/O KANHAIYALAL BHATIA
AGED ABOUT 54 YEARS
RESIDING AT NO. AA-1603
16TH FLOOR, ALPINE 'A' BLOCK
GOLDEN GRAND APARTMENT
YESHWANTHPURA
BENGALURU – 560 022.

... PETITIONER

(BY SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI MAHAMMADALI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY RMC YARD POLICE STATION
BENGALURU CITY – 560 022
(REPRESENTED BY LEARNED
SPECIAL PUBLIC PROSECUTOR)

- 2 . POLICE INSPECTOR
BAGALGUNTE POLICE STATION
BENGALURU CITY.
- 3 . DEPUTY COMMISSIONER OF POLICE
NORTH (CRIME)
BENGALURU CITY.
- 4 . MR.HARSHAL BHATIA
S/O DEVENDRA BHATIA
AGED ABOUT 25 YEARS
RESIDENT OF NO. AA-1603
ALPINE BLOCK
GOLDEN GRAND APARTMENTS
YESHWANTHPURA
BENGALURU – 560 022.

NOW AT NO.S-2
VISHWENDRA ENCLAVE
C-119A, DAYANANDA MARG
TILAKNAGAR
BENGALURU – 560 004.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1 TO R-3;
SRI MANU P.KULKARNI, ADVOCATE FOR R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING IN S.C. NO. 715/2019 ON THE FILE OF HONBLE XLV ADDL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, FOR OFFENCE UNDER SECTIONS 498-A, 302 OF INDIAN PENAL CODE AS AN ABUSE OF PROCESS OF LAW WHICH IS ARISING OUT OF CRIME NO. 251/2018 OF RMC YARD POLICE STATION, BANGALORE CITY AS PER ANNEXURE-E (FIR AND COMPLAINT), ANNEXURE- K (ORDER OF COGNIZANCE), ANNEXURE- L (ORDER SHEET OF

S.C.NO. 715/2018) AND ANNEXURE- M (DISCHARGE ORDER) AND DTD 05.08.23.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question proceedings in S.C.No.715 of 2019 arising out of crime in Crime No.251 of 2018 registered for offences punishable under Sections 498A and 302 of the IPC before the RMC Yard Police Station, Bengaluru City.

2. Facts, in brief, germane are as follows:-

The petitioner is the accused and 4th respondent is his son, defacto complainant. The petitioner gets married to one Mrs. Kiran Bhatia on 08-05-1995 which would be 23 years before the date of the alleged incident and from the wedlock two children are born, one the de-facto complainant and a daughter, both at the relevant point in time aged above 20 years. In this order, the petitioner and

his wife, the deceased, would be referred to as father and mother respectively. It is the averment in the petition that the family did reside together cordially in a flat situated at 16th floor, Alpine 'A' Block, Golden Garden Apartment, Yeshwanthpura, Bengaluru. The petitioner is said to be an employee at ABB as a software Engineer.

3. The case revolves round an incident that happened on 26-08-2018. It is the averment that it was a Raksha Bandhan day. On the said day, the mother of the defacto complainant is said to have prepared the food, served the food to all and was staying in the living room of the house. The son, CW-1 was said to be in the room and the daughter CW-12 had been outside the apartment to attend coaching. At about 3.35 p.m. the petitioner is said to have sensed some noise from the kitchen and goes to the kitchen and found that the wife was not in the kitchen. He then moves to the utility and does not find her. In the balcony attached to the utility, he sees down from the 16th floor of the balcony and finds lot of people gathered there. He immediately told his son and both of them rushed to the ground floor where the wife of the petitioner was lying with injuries. She succumbed to those injuries.

4. The petitioner then informs RMC yard Police, as also the neighbours and relatives. The Police come to the spot and conduct a mahazar and record the statement of the defacto complainant and registered an unnatural death report in UDR No.31 of 2018 as obtaining under Section 174 of the Cr.P.C. The body was then shifted to mortuary of M.S.Ramaiah Hospital awaiting arrival of the relatives.

5. The next day on 27-08-2018 the police conduct inquest panchanama on the body in the presence of the petitioner, his children and the relatives. There was no allegation of any involvement of the petitioner in the incident. The petitioner, his two children and the blood relatives travelled to Rajasthan, the place where they hailed to finish all the family rituals. After 14 days on completion of all rituals, the family comes back to Bangalore. The son/defacto complainant then registers a complaint on 11-09-2018 alleging that the petitioner, his father was always fighting with his mother, the deceased and in every fight, he was warning that he would kill her or she should die herself. It is the complaint that the

father is the reason for the mother's fall. Immediately, thereafter, a complaint comes to be registered in Crime No.251 of 2018 against the petitioner for the offence punishable under Section 306 of the IPC. The petitioner was taken into custody and interrogated and is said to have been on bail later. On the score that the complainant had no confidence with the person who was investigating into the offence, represents to the Commissioner of Police for change of Investigating Officer. The investigation is shifted from RMC Yard Police Station to Bagalgunte Police Station coming within the same Division.

6. The Investigating Officer then files a requisition before the concerned Court to include the offence under Section 302 of the IPC. The investigation is conducted and a final report is placed before the concerned Court alleging offences punishable under Sections 498A and 302 of the IPC. Cognizance is taken on the charge sheet and the concerned Court registers C.C.No.3751 of 2019. Since the offence was punishable under Section 302 of the IPC, the matter was committed to the Court of Sessions where it is registered and pending trial in S.C.No.715 of 2019. The petitioner

files an application seeking his discharge from trial on the score that he has nothing to do with the fall of the deceased/wife. This is a case where the father is complained of by the son of murdering the mother. The discharge application comes to be rejected. Upon rejection, the petitioner stands at the doors of this Court with the present petition. This Court owing to the submission of the learned senior counsel for the petitioner that change of jurisdiction was contrary to Section 36 of the Cr.P.C., had interdicted the proceedings. The respondent No.4 has filed his objections and the matter is heard.

7. Heard Sri Hashmath Pasha, learned senior counsel appearing for the petitioner, Sri B.N.Jagadeesha, learned Additional State Public Prosecutor appearing for respondents 1 to 3 and Sri Manu P. Kulkarni, learned counsel appearing for respondent No.4.

8. The learned senior counsel for the petitioner would submit that the power to change the Investigating Officer from one jurisdiction to another jurisdiction is not available with the

Commissioner of Police. It can be done only by the concerned Court or this Court. He would further contend that allegations made against the petitioner are all improbable. A father cannot be imagined to push the wife down as narrated by his son, the de-facto complainant. It was an accidental fall from the balcony at best. There is neither offence of Section 498A nor offence of Section 306 abetment to suicide and can never be an offence under Section 302 murder of his wife. He would contend that the son did not have a cordial relationship with his father, the petitioner. Therefore, to wreak vengeance against the petitioner, the son is tutored by the relatives and that tutoring has resulted in registration of crime. It is his case that if at all the son had to allege against the father, he would have done it in the first instance itself. The Police record the statement and register an unnatural death report. Not a whisper about the allegation comes about. It is his submission that it should be taken note of and proceedings be quashed.

9. Per-contra, the learned counsel appearing for the 4th respondent would vehemently refute the submissions contending that it is too late in the day for the petitioner to allege that transfer

of investigation which happened in the year 2018 is erroneous. Even otherwise, the learned counsel would contend that this Court itself has held that power under Section 36 of the Cr.P.C. is available for transfer of investigation if it is within the same Division or jurisdiction. It is his case that the judgment that the learned senior counsel placed reliance upon while submitting for grant of an interim order is not applicable to the case at hand. On merits of the matter, the learned counsel would submit that in Section 164 statement not of the son alone, the daughter as well would clearly pin down the petitioner for both the offences i.e., Sections 498A and 302 of the IPC. It is his submission that when there is copious evidence against the father, this Court in its jurisdiction under Section 482 of the Cr.P.C., should not interfere.

10. The learned Additional State Public Prosecutor would also toe the lines of the complainant in contending that there is no change in jurisdiction by the transfer. The transfer was necessitated by the representation of the son against the father. He would, therefore, contend that it is a matter of trial and since trial has progressed to a large extent, this Court should not today interfere.

11. I have meticulously perused the intricacies of the evidence and considered the submissions made by the respective learned counsel and have perused the material on record.

12. The afore-narrated facts are not in dispute. The link in the chain of events require reiteration date wise. The petitioner and the mother, now deceased get married on 08-05-1995. They live for 23 years together. From the wedlock, two children are born. At the relevant point in time, the children were beyond 20 years old. On an ill-starred afternoon of 26-08-2018, the mother allegedly falls from 16th floor of the apartment and succumbs to the cruel hand of destiny. An unnatural death report under Section 174 of the Cr.P.C., on a tempest of enquiry is rendered. On the next day, the inquest report is prepared and statements of the father of the complainant and other relatives are taken. The statement of the daughter is also recorded on 27-08-2018. The daughter is said to be away from the house when the alleged incident happened. It is a matter of record that all the family members travelled to Rajasthan and come back after 14 days. On coming back, the complaint comes to be registered by the son of the petitioner.

13. Since the entire issue triggered from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

"To
Station House Officer,
RMC Yard Police Station,
Bangalore-22.

Sub: Application to register First Information Report
against my father for intentionally killing my mother.

Respected Sir,

1. I Harshal Bhatia (S/o Devendra Bhatia), resident of AA-1603, Alpine Block, Golden Grand Apartments, Yeshwanthpur, Bangalore.

2. My father has been behaving in a egomaniacal way for years. He would create disputes over the smallest of things. This would result in altercations. My dad would end up berating and beating my mom. For instance he had mandated that as soon as he came back from office two glasses of water ought to be kept on the dining table. My mother obliged. One day when he returned from office, one of the two glasses was not completely full. Such a small thing resulted in him beating my mother. In another instance, he dragged my mother from the bed to the kitchen with her hair. I and my sister can never forget this horrifying instance of our mother being dragged across the floor as dad pulled her by hair. We later found out that this was because she was sick and asked him to make his own tea for one day. Due to such actions we feel unsafe with our father.

3. Due to my father's inappropriate behavior me and my sister have implored my mother to divorce or take action against my dad several times but she always refused. In the presence of just my sister and I, she revealed that she would not take any action against him until we were both well settled. Even my father, during fights has asked my mom for a divorce several times.

4. On the afternoon of 26th August my mother (Mrs. Kiran Bhatia), passed away when she was flipped by my father from our flat on the 16th floor. At that time this was purported to be an accident. On that fateful day my parental family utilized the fact that I was emotionally broken and they pressurized me to provide statements which were not true and were according to them. We (I and my sister) are both still students and were told now that our mom was gone, no one else except our father would take care of us ("Ab tumahara aur kaun hai?"). Now that my mother's last rights are completed, we are out of their clutches and they cannot enforce undue influence and pressure. Right now I am feeling much more confident to speak the truth before the authorities and make a request to reopen the case against my father.

5. On that afternoon I was reading a book in my room when I heard my parents fighting. This was a routine occurrence. After a while of fighting, I heard my dad shouting "Main tujhe jaan se maar dunga haraamzaadi! Teri itni himmat ki tune mujhpe haaath uthaya?" (I will kill you, you haraamzaadi! How dare you hit me?). To which my mom replied "Puri zindagi pitati hi aa rahi hun, ek din to maar saktihun". (I have been beaten all my life. For once I can hit back"). Then I started moving outside the room to see what was going on. I saw my dad standing in the balcony. He lifted my mom by her legs and flipped her over. I rushed to the balcony. When he saw me, he joined his hands and begged "Maine kuch nahi kiya! Maine kuch nahi kiya! Maine kuch nahi kiya! (I did not do anything! I did not do anything! I did not do anything"). After I came down I saw that my mother had died on spot. My father killed my mother and he must be brought to justice.

6. After the incident, when some of the relatives and friends had gathered and some had called I spoke to them about the incident that actually happened. Umesh Bhatia (my uncle) and Himanshu Bhatia (cousin) were successful in convincing me to hide the actual facts of the incident. I was told that since I had already lost my mother, my dad was the only one remaining to take care of us. They specifically emphasized that, "Zindagi bhawnaon se nahi chalti, apne aur bahan kay bhavishya kay baare me soch. Meri maan nahi to sab khatam ho jayega" (irrespective of your feelings and emotions, you have to think about your

sister's future. It would be ruined if you do not act accordingly."

7. I am not just sure but confident and have countless reasons to believe that this incident was not an accident, considering the egoist nature and short temperedness of my father. He usually gets out of control and he can harm my mother to any extent. This was not an accident but a murder.

Therefore, I make a request before the competent authority/investigating officer to reopen and investigate the matter afresh on the basis of my application.

Date: 11-09-2018

Place: Bangalore, India.

Complainant/Applicant: Harshal Bhatia."

(Emphasis added)

Pursuant to the complaint, a crime comes to be registered against the petitioner for offence punishable under Section 306 of the IPC in Crime No.251 of 2018. The incident was on 26-08-2018. The investigation commences in Crime No.251 of 2018.

14. The statement of the daughter of the deceased is recorded under Section 164 of the Cr.P.C. The daughter narrates the squabble between the mother and the father intermittently and speaks about the violence as well. The daughter's statement, insofar as it is relevant, reads as follows:

"... .."

2. My father by name Devendra Bhatia is working at ABB Company as an Engineer. Since from our childhood my father was egoistic, control freak, temperament. My father used to treat my mother as slave. My father never shown any love and affection towards myself and my brother. When we are younger age he was showing little bit care on us but when we are growing up he started to treat us harshly.

3. I would like to say some instance about his egoistic and temperament nature that, when I was 6 – 7 years old child one day my mother was not feeling well she was suffering from high fever, at that time my father asked her to prepare tea for himself. But my mother due to high fever she was not in position to move ahead, hence she told him to prepare tea for him, for that my father got angry and dragged my mother from bedroom to kitchen by grip of her hair and pushed her into the kitchen by saying that “what do you think, I will make my own tea?” This is one of the situation to tell about my father and this type of incidents have occurred many times from our very young age.

4. My father used to spit on her, hit her, abuse her physically and mentally so much without reason. One day there was fight between my father and my mother. My mother had told herself that “mein Kamini hu kya”. For that my father picked up his shoe and hit my mother. At that time my brother took photo/video from his mobile. Till today we are having that photo/video to show his rude behaviour and torture.

5. Recent years my mother started becoming stronger. We used to tell her to take divorce from him because she could have led a better life rather than living with my father but my mother always used to say that, you both should settle down first then we think of it.

6. One day my father was angry during a fight when he tried to kick her, my mother moved little bit to side but then he hit TV, TV screen was broken and even glass pieces were there, there was a dent on TV screen. Such was the intensity of his brutality. Despite of his ill-

treatment my mother was tolerating it due to our younger age.

7. My mother always praying God for peace and she used to perform pooja at home. My mother always used to read Bhagwad Gita. One day my father came in an angry mood and he saw that my mother was reading holy Gita book. My father want to destroy it and he told that why you are reading Gita you won't get any knowledge, you destroy it or else I will destroy. Then I took the Gita book from my mother and hid it somewhere. Then my father came and burnt the entire pooja room and insisted my mother to burn Gita book also. My father never allowed my mother to get peace by reading Holy Books also.

... ..

14. Next morning I told her that if he does not want to see your face you ask him to go out. On that night again there was fight between them and again my father asked my mother to go out as he don't want to see her face. But, my mother at that time resisted him and told to him that "if you don't want to see my face you get out". For that my father got so much anger and as usual he asked for divorce. For that my mother replied that I will take divorce. That is the first time my mother agreed for divorce. For that my father got anger and told saying that "ek phutti kodi bhi nahi dunga" means I will not give you single penny.

15. For that my mother said I don't want anything. I just want peace. Like that fighting was going on for some time and then my mother went out from the room and she was crying and slept on the cot at drawing room.

16. On 26-08-2018 around 10-30 a.m. she woke me up and asked me to get ready to celebrate Raksha Bhandhan. At about 11.00 a.m. I woke my brother and asked him to get ready to celebrate Raksha Bhandhan. When I was making the plate ready by keeping tilak, rakhi sweets etc. my father was across and I asked him to join for rakhi celebration but he ignored me and went out. After that we all i.e., myself my brother and my mother have celebrated Raksha Bhandhan.

17. After that I called him for 4 – 5 times but he did not lift my call then after 10 – 15 minutes my father came back to home. Then I asked him to get the rakhi tied, but he did not reply.

18. In spite of fight from last 3 – 4 days my mother went to him and asked my father that “tumhari behanone rakhi beji hai, unase tumhari kya dushmani, rakhi to bandhvalo” your sisters have sent the rakhi, you do not have any enmity with your sisters, atleast get the rakhi tied. My father replied that (Bhadame gayi rakhi, bhad mein gaye tum sab) to hell with the rakhi and to hell with you all. I noticed that my father was in mood to pick quarrel for no reason and he was in a anger mood so I asked my mother to let him be. After that I went to my room and started studying, around 1.00 p.m. my mother called me and told me to get ready to go to coaching class. When I came out from room I noticed that my mother was preparing dal bati churma. I asked my mother why you are preparing this dish for my father even though you are already hurt in the hands. To which my mother said “koi bath nahi beta unka mood achha rahega unko dal bati bahot acchi lagatihai” means its OK beta his mood will get better, and he likes dal bati very much. She told me to focus on my coaching class. My mother made specially rice for me because bati was not yet baked then I had rice and dal. When I was leaving I told to my father Jai Sri Krishnan i.e., the word we use to say when we leaving. He did not replied rather he had that look to get fight and to throw something. Then my mother dropped me till bus stop even though she was busy in the kitchen. At the bus stop she told me that I will prepare bati for you in the evening when you come back and you don’t worry you study well.”

(Emphasis added)

Since the daughter was not present in the house at the time of the incident, the aforesaid statements would become important as a

prelude to the alleged incident. The investigation would go on. Alleging that the Investigating Officer was well known to the petitioner, the son/complainant represents before the Commissioner of Police for change of Investigating Officer. The representation reads as follows:

"To
Shri T.Suneel Kumar, IPS
The Commissioner of Police Bangalore City,
Infantry Road,
Bangalore.

Sub: RMC Yard Police Station coerced me to change my complaint for my father intentionally killing my mother.

Respected Sir,

1. I harshal Bhatia (S/o Devendra Bhatia), resident of AA-1603, Alpine Block, Golden Grand Apartments, Yeshwanthpur, Bangalore.
2. **Yesterday (11th September) I tried to register a complaint against my father for killing my mother. The police coerced me to change my complaint and modified it and took my signature. And then filed the FIR.**
3. Since the FIR was registered in Kannada they completely changed it and forced me to sign.
4. The original complaint I took to the police station is also enclosed here with the modified one with the FIR.

Therefore, I make a request to correctly lodge my original complaint and reopen the investigation by changing the investigation officers. The present

investigation officer stays in the same apartment building and is known to my father.

Yours sincerely,
Sd/-
Harshal Bhatia

Date: 12-09-2018
Place: Bangalore, India. "

(Emphasis added)

The representation is on 12-09-2018. Not very late, but the next day of registration of the complaint itself. Therefore, the statement of the daughter is recorded by the changed Investigating Officer. The Investigating Officer of Bagalgunte Police Station to whom the investigation was handed over records the statement of the son, the defacto complainant as obtaining under Section 164 of the Cr.P.C. His statement reveals gory details of what happened on the said date or previous to the said date. The statement is as follows:

"My name is Harshal Bhatia and I am pursuing Engineering 7th Sem. At Dr. Ambedkar Engg. College, Bangalore. My father Devendra Bhatia is working at ABB company as a Engineer. My mother Kiran Bhatia, she was a house wife. My father Devendra Bhatia was very egoistic and violent also. He used to pick up quarrel with my mother for simple reasons since from our childhood. My father used to beat my mother many times. My father used to fight with my mother and shout, beat, spit on and drag my mother, sister and myself. So I would like to say that my father was very egoistic. I would like to say one instance for illtreating my mother that my father mandated that as soon as he came back from office two glasses of water ought to be kept on the dining table. **My mother**

obliged for the same and she used to keep two glasses of water on the dining table everyday but recently about 2 months back one day when he returned from the office one of the two glasses was not completely full hence for the said reason my father beaten my mother very badly. Despite of such torture my mother used to tolerate, because of our younger age. And she always used to tell us, we should settle down in life. If any police complaint is lodged that will give bad name to our family, hence for that reason my mother never agreed to take any action against my father. But my father used to insist her to give divorce always but my mother never used to reply. But, in recent days my father was asking that (tere sath nahi rehena, mujze divorce dede) means you are not required to me give divorce. For which my mother replied that (haan nahi rehena, ithane salonse torture seharahi hun) means I do not want to bear this torture I will take divorce. Then my father told that (main thuze ek phuti kodi bhi nahi dunga) means I won't give you single rupee also.

2. On 26-08-2018 I was at my home on that day there was Raksha Bhadhan. At about 11.00 a.m. my sister by name Yogya Bhatia asked me to get ready to celebrate Raksha Bhadhan, at that time my father was not at home. We all i.e., myself, my sister and my mother have celebrated Raksha Bhadhan. After 10-15 minutes my father came back to home. At that time I have noticed that my father had angry look on his face and my sister asked him to get tie the rakhi to his hand which was sent by his sisters. For that my father did not replied and ignored my sister. In spite of fight from last 3 - 4 days my mother asked my father that (tumhari behanone rakhi beji hai, unase tumhari kya dushmani, rakhi to bandhvalo) your sisters have the sent the rakhi, you do not have any enmity with your sisters, atleast get the rakhi tied. My father replied that (Bhadame Gayi rakhi, bhad mein gaye tum sab) to hell with the rakhi and to hell with you all. Then my sister prevented my mother to say anything to him because at that time he was in the mood to pick up quarrel and fight. In spite of such an atmosphere at home my mother was cooking dal bati a special Rajasthani Dish for my father. Then I went to my room and went to sleep. I got up around 3.00 p.m. at that time my sister was not there at home and I understood that she

went to her coaching class. I then picked up a book and started reading at room. **Thereafter, my mother called me for lunch. I told her that after finishing reading I will join for lunch. In the meantime, she served food to my father. My father asked and shouted at her to serve more Bati to him as his plate was empty. My mother told that more bati is not yet baked, if he wants she serves rice. My mother asked him the same thing for 3 times but my father did not replied. Thereafter he was shouted by saying that (andhi hai kya plate khali hai dikhata nahi kya, jo bhi hain wo dede) means are you blind cannot you see that my plate is empty, whatever is there give me that. My mother was busy in preparing Bati hence she told my father to come to kitchen to take rice, for that my father's ego got hurted and suddenly he went to kitchen and started to hit my mother with pressure cooker lid. Then I heard that my father shouting by saying (jan se maardunga haram zaadi, teri itani himmath ki muzape hath uthaya) means I will kill you haram zaadi, how dare you to hit me. My mother was crying and she replied saying (puri jindagi pitati aarahi hun... ek din maar bhi sakati hun) means for all my life I have been beaten for once I can hit back. Then I thought the fight was too serious hence I came out running to the dinning room at that time I saw my father and mother at balcony. My father was flipping my mother over the balcony. I ran to balcony my father turns towards and joined his hands and told that (meine kuch nahi kiya, meine kuch nahi kiya, meine kuch nahi kiya) means I did not do anything. I did not do anything, I did not do anything. Thereafter I ran down my mother was dead thereafter my father came and tried to move the body though I told him not to move the body. My father tried to take body to house. My mothers head was broken at the back.** Immediately public gathered there but my father vanished from the area. Again my father came back with bed sheet. Public informed to police, the police came, I took them to house and shown everything. Then my fathers friends gathered and told me that no beta your mother is not there who will take care of you and your sister, you do not involve the police and pressured me. At that time my mothers body was at ambulance, hence I also went in ambulance to M.S. Ramaiah Hospital, after finishing all the formalities my paternal cousin by name Himanshu Bhatia called me and told that I should tell to Police

that we are happy family and at that time of incident I was sleeping, the incident might have happened accidentally. My cousin asked me to come directly to police station, when I went to police station where they have already prepared a written statement, for that they have asked me to put signature. At that situation I am not in a position to read the statement. And I have signed it blindly due to emotional feelings.

3. Due to their pressure and emotional distress I did not able to lodge the complaint immediately against my father. My father is sole responsible and he himself has committed murder. Therefore, I prays to take suitable action and punish him.

4. On the next day we cremated my mother at Chamarajpet. After that two policemen came to our house and asked us to remove the wire which was in tacked to get dry the cloths and also asked us to keep stool near the edge of balcony and keep the baking woven on the top of shelf at balcony because post mortem doctor will come and inspect the spot.

5. Further, I would like to say that, during the rituals days at Kota, Rajashtan, my father asked me to give my mother mobile but in my mother mobile there was some recordings relating to his abusive behavior, therefore, I feared that I if give the mobile he may delete it, hence, I refused to hand it over to him. The said incident angers my father and his brother Manish Bhatia and they strangled and choked my throat. After my shouting my sister and another uncle came to rescue me.

6. Then I realise that myself and my sister are not safe in their hands hence we called our maternal uncle and grandfather to come and take us with them, then we went to Jaipur and we told everything to our maternal uncle and grandfather about the incident. Then we came back to Bangalore and to lodged a complaint against my father.

7. But the complaint attached to the present FIR was modified by the police when we went to lodge complaint to police 11-09-2018. On that day I was accompanied with sister, maternal uncle and grandfather but the police did not allow them to get inside the room.

Then police called my father to the station and my father came to police station and he sat on the chair as a king and he continued to abuse in filthy language in front of police. Four to five police men surrounded me and asked me to modify the complaint as if my mother fell from our flat due to torture of my father but actually my father flipped my mother from balcony. At that situation with no other option I had modified the complaint.

8. On the next day me, my sister and maternal uncle approached the Commissioner of Police and finally we got the chance to meet him in the evening. He told to record 164 statement.

Hence, I beg to take suitable action against my father.”

(Emphasis added)

After recording of statements as noticed hereinabove, charge sheet comes to be filed by the Bagalgunte Police before the concerned Court. The concerned court then registers C.C.No.3751 of 2019 for offences punishable under Sections 498A and 302 of the IPC. The summary of the charge sheet as obtaining under Column No.7 reads as follows:

“ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂ-4 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರ ತಂದೆಯಾಗಿದ್ದು, ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಯಾದ ಮೃತೆ ಶ್ರೀಮತಿ ಕಿರಣ್ ಭಾಡಿಯಾ 45 ವರ್ಷದವರನ್ನು ಈಗ್ಗೆ 24 ವರ್ಷಗಳ ಹಿಂದೆ ಮದುವೆಯಾಗಿದ್ದು, ಸಾಕ್ಷಿ-೧ ರವರು ತನ್ನ ತಾಯಿ ಮತ್ತು ಸಾಕ್ಷಿ-12 ಮತ್ತು ಆರೋಪಿಯೊಂದಿಗೆ ಬೆಂಗಳೂರು ನಗರ ಆರ್.ಎಂ.ಸಿ ಯಾರ್ಡ್ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನ ಯಶವಂತಪುರ ಗೋಲ್ಡನ್ ಗ್ರಾಂಡ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಅಲ್ಪೈನ್ 'ಎ' ಬ್ಲಾಕ್ ಮನೆ ನಂ ಎಂ 1603 ಆರೋಪಿಯು ಅಹಂಕಾರದ ದೋರಣೆಯ ಮತ್ತು ಹಿಂಸಾ ಪ್ರವೃತ್ತಿಯುಳ್ಳವನಾಗಿದ್ದು, ಸಾಕ್ಷಿ-1 ರವರ ಬಾಲ್ಯದಿಂದಲೂ ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಗೆ ಸಣ್ಣ ಪುಟ್ಟ ಕಾರಣಗಳಿಗೆ ಬೈಯುವುದು, ಹೊಡೆಯುವುದು ಜುಟ್ಟನ್ನು ಹಿಡಿದು ಎಳೆದಾಡುವುದು ಮತ್ತು

ಸಾಕ್ಷಿ-1 ಮತ್ತು ಸಾಕ್ಷಿ-12 ರವರಿಗೂ ಸಹ ಹೊಡೆದು ಹಿಂಸೆ ಕೊಡುವುದನ್ನು ಮಾಡುತ್ತಿದ್ದು, ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಯಾದ ಮೃತ ಶ್ರೀಮತಿ ಕಿರಣ್ ಭಾಟಿಯಾ ರವರು ಸಾಕ್ಷಿ-1, ಸಾಕ್ಷಿ-12 ರವರ ಭವಿಷ್ಯದ ಹಿತದೃಷ್ಟಿಯಿಂದ ಆರೋಪಿಯು ಕೊಡುತ್ತಿದ್ದ ಮಾನಸಿಕ ದೈಹಿಕ ಹಿಂಸೆಯನ್ನು ಸಹಿಸಿಕೊಂಡು ಬಂದಿದ್ದು, ಆದಾಗ್ಯೂ ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಗೆ ವಿಚ್ಛೇದನ ಕೊಡುವಂತೆ ಒತ್ತಾಯಿಸುತ್ತಿದ್ದು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿ ಮೃತ ಇದಕ್ಕೆ ಯಾವುದೇ ಪ್ರತಿಕ್ರಿಯೆ ನೀಡದೇ ಆರೋಪಿಗೆ ನಿನ್ನೊಂದಿಗೆ ಇರುವುದಿಲ್ಲ ಇಷ್ಟು ವರ್ಷಗಳು ಸಹಿಸಿಕೊಂಡಿದ್ದೇನೆ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ಆರೋಪಿಯು ಒಂದು ಕಿಲುಬು ಕಾಸನ್ನು ಕೊಡುವುದಿಲ್ಲವೆಂದು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಗೆ ಹೇಳಿರುತ್ತಾನೆ. ದಿನಾಂಕ:26/08/2018 ರಂದು ರಕ್ಷಾ ಬಂಧನ ಇದ್ದುದರಿಂದ ಬೆಳಿಗ್ಗೆ 11-00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-1, ಸಾಕ್ಷಿ-12 ಮತ್ತು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿ ಮೃತ ಎಲ್ಲರೂ ಒಟ್ಟಾಗಿ ಮನೆಯಲ್ಲಿ ರಕ್ಷಬಂಧನವನ್ನು ಆಚರಿಸಿಕೊಂಡಿದ್ದು, ಮಧ್ಯಾಹ್ನ 3-00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಯಾದ ಮೃತ ರಾಜಸ್ಥಾನದ ವಿಶೇಷ ಅಡುಗೆಯಾದ ದಾಲ್ ಭಾಟಿ ಮಾಡಿ ಆರೋಪಿಗೆ ಉಟಕ್ಕೆ ಇಟ್ಟಾಗ ಆರೋಪಿಯು ಇನ್ನೂ ಹೆಚ್ಚಿಗೆ ಭಾಟಿ ಹಾಕು ಎಂದು ಜಗಳ ಮಾಡಿದ್ದು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿ ಇನ್ನೂ ಭಾಟಿ ಮಾಡುತ್ತಿದ್ದೇನೆ ಬೇಕಾದರೆ ಅನ್ನ ಬಡಿಸುತ್ತೇನೆ ಎಂದು ಹೇಳಿದಾಗ, ಆರೋಪಿಯು ತಟ್ಟೆ ಖಾಲಿಯಾಗಿದೆ. ಏನಿದಿಯೋ ಅದನ್ನ ತಂದು ಕೊಡು ಎಂದು ಕೂಗಾಡಿದಾಗ ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿ ಅಡುಗೆ ಮನೆಗೆ ಬಂದರೆ ಕೊಡುತ್ತೇನೆ ಎಂದು ಆರೋಪಿಗೆ ತಿಳಿಸಿದಾಗ, ಆರೋಪಿಯು ಅಡುಗೆ ಮನೆಗೆ ಹೋಗಿ ಕುಕ್ಕರ್‌ನ ಮುಚ್ಚಳದಿಂದ ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಗೆ ಹೊಡೆದು ನಿನ್ನನ್ನು ಕೊಂದು ಹಾಕುತ್ತೇನೆ ಎಷ್ಟು ಧೈರ್ಯ ನನ್ನ ಮೇಲೆ ಕೈ ಮಾಡುತ್ತೀಯೆ ಕೂಗಾಡಿದ್ದು, ಇದಕ್ಕೆ ಸಾಕ್ಷಿ-1 ರವರು ತಾಯಿ ಮೃತ "ಜೀವಂತ ಪರ್ಯಾಂತ ಹೊಡೆತ ತಿಂದಿದ್ದೇನೆ ಒಂದು ಸಾರಿ ತಿರುಗಿಸಿ ಹೊಡೀಬಲ್ಲೆ ಎಂದು ಹೇಳಿದಾಗ, ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಯನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಅಡುಗೆ ಮನೆಯ ಬಾಲ್ಕನಿಯಲ್ಲಿ ಜಗಳವಾಡುತ್ತಿರುವಾಗಲೇ ಸಾಕ್ಷಿ-1 ರವರ ತಾಯಿಯ ಎರಡು ಕಾಲುಗಳನ್ನು ಎತ್ತಿ ಬಾಲ್ಕನಿಯ ಗೋಡೆಯಿಂದ ಕೆಳಕ್ಕೆ ಬಿಟ್ಟು ಕೊಲೆ ಮಾಡಿರುತ್ತಾನೆ.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ಆರೋಪಿಯ ವಿರುದ್ಧ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ."

Since the offence was punishable under Section 302 of the IPC, the case was committed to the Court of Sessions and is now pending trial in the aforesaid sessions case.

15. The petitioner files an application seeking his discharge shockingly enough and it comes to be rejected. After the said rejection, the petitioner is at the doors of this Court on a weak legal

submission that the transfer was contrary to Section 36 of the Cr.P.C., and runs counter to the judgment rendered by the coordinate Bench of this Court in the case of **Mr. MAGADI SHANKAR RAO KRISHNA MURTHY v. THE COMMISSIONER OF POLICE**¹. The judgment in **MAGADI SHANKAR RAO** was tossed before the Apex Court and the Apex Court on 18-07-2016 disposed of the SLP by affirming facts therein, but keeps the law open to be decided in an appropriate case. Therefore, the Apex Court had not granted its imprimatur to the legal findings in **MAGADI SHANKAR RAO**. Even otherwise, the said judgment in **MAGADI SHANKAR RAO** is considered and distinguished by this Bench in the case of **ANIL D'SOUZA v. THE STATE OF KARNATAKA**² wherein this Court has held as follows:

"....

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused relevant material on record. In furtherance whereof, the only issue that false for consideration is, *whether the order dated 06-10-2022 transferring the investigation from Station House Officer, Electronic City Police Station to the Station House Officer, Marathhalli Police Station is valid in the eye of law?*

¹ **ILR 2015 KAR 6039**

² **W.P.No.22044 of 2022 decided on 28-07-2023**

9. Section 36 of the CrPC reads as follows:

"36. Powers of superior officers of police.—*Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."*

Section 36 deals with powers of superior officers of Police. The Police Officers superior in rank to an officer in-charge of the Police Station may exercise same power throughout the local area to which they are appointed and as may be exercised by any such officer within the limits of his station. Since the story commences from 07-08-2022, it would suffice for consideration of the issue in the *lis*. Dr. Seena Biju, wife of the petitioner checks into a hotel by name Ottera and consumes poison. The poison does not kill Dr. Seena Biju immediately who is shifted from hospital to hospital and succumbs to the poison on 10-08-2022. It appears after consumption of poison on 07-08-2022 the Electronic City Police had asked Dr. Seena Biju to give her statement and the statement was that nobody was responsible for her act of consuming poison. After her death, the 4th respondent, sister of the deceased registers a complaint on 18-08-2022. The complaint so registered reads as follows:

"To
The Police Inspector,
Electronic City Police Station,
Bangalore, Karnataka.

Date:18-08-2022

From:

Mrs. Leena Denzil,
(Younger sister of deceased Seena Biju),
W/of Denzil Martin, Flat No.301,
3rd Floor, Bhavanis YNR Paradise,
Beside Boddu Kamamma Function Hall,
Yapral – 500 087, Secunderabad,
Telangana, Email:Leena.emeraid13@gmail.com
Phone: 9966100037, Community: Christian.

Sir,

Sub: UDR FIR No.0018/2022, PS Electronic City, Bangalore City – Complaint against

**Anil D'Souza for abetment to suicide
and dowry death – Reg.**

--

I, Leena Denzil, Aged 48 years W/o Denzil Martin, R/o Flat No.301, 3rd Floor, Bhavanis YNR Paradise, Yapral, Secunderabad, Telangana State – 500 087, beg to submit the following for your kind consideration and necessary action.

I am a resident of the above address. I am the younger sister of Late Dr. Seena Biju (50 years) and Mr. Anil D'Souza is her husband. He is 51 years S/o Joseph Martin D'souza. I am lodging this complaint as the complicity in commission of offence by Mr. Anil D'Souza is there in the untimely and unfortunate death of my sister Mrs. Seens Biju on 10th August, 2022 at 8.30 a.m. That certain facts have come to our notice in the last 5 days related to the demise of my sister under suspicious circumstances. In this regard, my father, Retd. Capt. V.P. Joseph, has lodged a complaint and the same has been registered in Electronic City Police Station on 10th August 2022.

After the demise of my sister, myself and my family members have ascertained and procured substantial, adequate, cogent and incriminating evidences and documents which is submitted at the time of investigation.

Firstly, they were legally wedded on the 6th April, 2021 at the Office of District Collector, East District, Gangtok. My sister was not at all looking for this marriage, however **Anil kept pursuing her and stalked her with a dishonest intention of making gain out of savings and earnings.** In pursuance of his nefarious intention of getting into a relationship, he was insistent and allured her. After many months of persuasion and stalking eventually **Mr. Anil D'Souza entrapped her with fraudulent representations** and she succumbed to his ploy and got convinced about marriage. At this point, I would like to state that for both of them it was their second marriage.

Soon after the marriage, from April to July, 2021 there were multiple instances of mental and physical cruelty, culpable indifference, scheming disinterest as well as lack of basic human courtesy. He began demanding all details of her assets both movable and immovable and as to any inheritance from my parents side.

Secondly, when Anil and Seena moved to Bangalore (Apartment D 001, Ajmera Infinity, Neeladri Road, Electronic City, Phase-I, Bangalore-560 100), there were **again many instances of perpetrated mental and physical torture** on my sister. He subjected her to ill-treatment and he repeated **culpable indifference and aggravated behavior** towards my sister. He even **berated her prior life and savings**, mocking her financial status and achievements as she could not put up more than ₹ **5,00,000/- cash towards the house purchase on the demand of Mr. Anil.**

Thirdly, Anil was **cheating on my sister**, which was shared by her to us on multiple occasions. He was having affairs with many women and had lengthy and indecent conversations with them. Upon trying to discuss and question such topics he would fly into a rage and use abusive language with her, passing disparaging remarks and employing unparliamentary language which caused mental trauma to my sister and felt deceived due to him not addressing his obligations.

Fourthly, there are instances where he has **thrown my sister out of the house demanding money from her father.** His rage and anger was also demonstrated outside the house. Seena was subject to high stress by him and reached out to my parents as well as Anil's sister Charmaine for support. His sister refused to be involved due to Anil's unpredictable behavior in such matters. Furthermore his behavior of cheating women and causing mental trauma was **observed as a repeated pattern which needs to be strongly investigated.**

Lastly, on the 7th August, **his abrasive behaviour forced my sister out of the house and take the extreme step of suicide.** As per Anil D'Souza, who informed Swapna (my younger sister), she checked in to a hotel named Otera at around 10.30 a.m. and consumed Paraquat. She then reached out to Stephen George (my cousin brother) asking him to pick her up through a call and voice message. Stephen on visiting the hotel, found her in a extremely low condition and called to inform Anil, who refused to come to help. Stephen then moved her to Kavery hospital for treatment. Seena's (deceased) family (we) were informed by Swapna (younger sister) at 4.30 p.m. and subsequently we reached Bangalore on 8th August

and were here until the 10th August 2022 for her treatment. During her hospitalization he cunningly **used her bank cards and withdrew substantial money** to transfer money to himself in the name of hospital expenses but never paid her bills in full. **He even did not attend his own wife's funeral in Hyderabad.**

I, her sister, Leena Denzil, would like to initiate a formal investigation under the caption of **Abetment to Suicide**, as all instances point to his systematic, continuous oppression and merciless nature which has pushed, forced, compelled and created a traumatic environment leading to the act of suicide. Hereby we request you to **take appropriate steps to see that the culprit is brought to justice as per law**. We would also like to know what action was initiated so far and what is the present state of investigation.

We also need **support to obtain all her belongings from her residence (Ajmera Infinity)** to be handed over to the rightful heir Ms. Rhea Biju, her daughter.

My deceased sister's daughter by name Ms. Rhea Biju, resident of New Zealand, has executed the General Power of Attorney in my favour proceed with all legal and other co-related acts on her behalf. A copy of the GPA is filed with this letter.

For your immediate action,
Thanking you,

Yours sincerely,
Sd/-
Mrs. Leena Denzil,
9966100037,
Leena.emerald13@gmail.com

The allegation against the petitioner is of physical torture, demand of money, oppressive behavior of the petitioner to be the reason for commission of suicide and abetment which was sought to be projected in the complaint. The complaint then becomes a crime in Crime No.157 of 2022 for offences punishable under Sections 498A and 306 of the IPC. It was registered before the Electronic City Police Station and the Station House Officer of the said Police Station takes up the investigation. The petitioner then receives a communication on

16-10-2022 from the Station House Officer of Electronic City Police Station and the said communication reads as follows:

“ಇವರಿಗೆ

ಅನಿಲ್ ಡಿಸೋಜಾ ಬಿನ್ ಜೋಸೆಫ್ ಮಾರ್ಟಿನ್ ಡಿಸೋಜಾ
ಅಜ್ಜೇರಾ ಇನ್ಫಿನಿಟಿ ಅಪಾರ್ಟ್‌ಮೆಂಟ್
ನೀಲಾಧಿರಸ್ತೆ, ಎಲೆಕ್ಟ್ರಾನಿಕ್‌ಸಿಟಿ ಫೇಸ್-1
ಬೆಂಗಳೂರು ನಗರ.

ಈ ಮೂಲಕ ನಿಮಗೆ ಸೂಚಿಸುವುದೇನೆಂದರೆ, ನಿಮ್ಮ ವಿರುದ್ಧ ನಮ್ಮ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ದಾಖಲಾಗಿರುವ ಮೊ.ಸಂ.157/2022 ಕಲಂ 498(ಎ), 306 ಐ.ಪಿ.ಸಿ ಪ್ರಕರಣದ ಕಡತವನ್ನು ಹಿರಿಯಾಧಿಕಾರಿಗಳ ಆದೇಶದ ಮೇರೆಗೆ ಮುಂದಿನ ತನಿಖೆಗಾಗಿ ಮಾರತ್ತಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ, ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ರವರಿಗೆ ವರ್ಗಾವಣೆ ನೀಡಿರುತ್ತೆ. ನೀವು ಇನ್ನೂ ಮುಂದೆ ಈ ಪ್ರಕರಣದ ವಿಚಾರಣೆಗಾಗಿ ಮಾರತ್ತಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ, ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ರವರ ಮುಂದೆ ಹಾಜರಾಗಲು ಹಾಗೂ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ಹಾಜರಾತಿಯನ್ನು ನೀಡಲು ಸೂಚಿಸಿದೆ.”

The communication informs the petitioner that Crime No.157 of 2022 is transferred to Marathhalli Police Station from Electronic City Police Station on the direction of higher up and, therefore, the petitioner was directed to approach Marathhalli Police Station in future. Immediately thereafter, the petitioner is before this Court challenging the said order of transfer in a petition filed on 07-11-2022.

10. The learned senior counsel appearing for the petitioner would submit that the 4th respondent/complainant on 03.10.2022 communicates to the 2nd respondent alleging faulty investigation by the Station House Officer of Electronic City Police Station, after which a second complaint is registered before the Assistant Commissioner of Police and the complaint is accepted on 06.10.2022. The transfer from Electronic City Police Station to Marathhalli Police Station happens without assigning any reason. Immediately thereafter, an application is filed before the learned Sessions judge seeking cancellation of bail by the 4th respondent. The reason was that when the petitioner was marking his attendance in pursuance of conditions of bail, he was informed about the transfer and later he was not permitted to mark his attendance at the Police Station. The learned senior counsel also contends that the Additional Commissioner of Police has no power of transfer of investigation from one Police Station to another. In this regard

he has placed reliance upon a judgment of the co-ordinate Bench of this Court in the case of **MAGADI SHANKAR RAO KRISHNA MURTHY v. COMMISSIONER OF POLICE**³ wherein it is held as follows:

"11. *The territorial jurisdiction of the Commissioner of Police to the entire Bangalore City is as specified by the State Government. Commissioner of Police is a superior police officer as defined by Section 2(22) of Karnataka Police Act, 1963. The Officer in-charge of a Police Station is defined in Section 2(o) of the Code usually who is of the rank of the Police Inspector, is inferior in rank in the hierarchy of the system.*

12. *The Apex Court in the case of Nirmal Singh Kahlon v. State of Punjab (supra) along with Another Case.*

"27. In terms of Section 3 of the Police Act, 1861, the State has the ultimate say in the matter of superintendence of investigation. Section 36 of the Code must be read harmoniously with the said provision. Therefore, when Section 36 of the Code uses the words "in rank", it should be given a purposive construction. Although a plain reading of the aforementioned provision appears to be containing three ingredients, namely, (i) the investigation must be carried out by an Officer in charge; (ii) which may be supervised by an Officer superior in rank; and (iii) in respect of a local area to which they are appointed, but in the context of the power of the State vis-a-vis the provisions of the Act, the same, in our opinion, deserves a wider application."

By a catena of judicial pronouncements, the scope and ambit of this Section 36 of the Code is well defined and there is no doubt that the Commissioner of Bangalore is the officer superior in rank to an Officer in charge of the Police Station. The powers of the Police Commissioner in the capacity of the superior officer to take over the investigation from the jurisdictional Investigating Officer cannot be a matter of quarrel.

In the case of CBI v. State of Rajasthan [(2001) 3 SCC 333: AIR 2001 SC 668], it was held that when an order

³ ILR 2015 KAR 6039

under Section 156(3) of the Code is passed by a Magistrate, any officer superior in rank or such officer in charge of the police station can well exercise the power to conduct such an investigation and all such investigation be deemed would be an investigation conducted by an officer in charge of the police station. It was held 'It is permissible to any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu either on the direction of the Superior Officer or even that of the Government' Unfortunately, in the case on hand the Commissioner did not take over investigation by himself but directed the Assistant Commissioner of Police (Crimes) to order a Police Officer of CCB unit to conduct the investigation. Now it is argued for the respondents that the Police Commissioner in the capacity of the superior officer while exercising his power under Section 36 of the Code delegated his power to the Assistant Commissioner of Police, to take out investigation from local jurisdiction for proper investigation through another police officer who is not less than the rank of Station in charge. While presenting such submission, the respondents fail to equate the Commissioner of Police of City of Bangalore to the State as contemplated in Article 12 of the Constitution of India to authorize investigation by a different police officer of different unit. Selection of investigating agency is neither the prerogative of the complainant nor the choice of the jurisdictional Magistrate that is also well settled by the judicial pronouncements. It is the State Government or the High Court in exercise of its power under Article 226 of the Constitution that can order investigation by any other specialized agency than the local police. It is the State Government under the general powers of superintendence under Section 3 of the Police Act, 1861 has the power to direct further investigation under Section 173(8) of Cr. P.C. (State of Bihar v. J.A.C. Saldanha [1980 SCC (Cri) 272]) The Courts ordinarily do not intervene in the matter of investigator by police, however, in exceptional circumstances, the Court would intervene to protect the personal/propriety rights of the citizen (Manohar Lal Sharma v. Principal Secretary [AIR 2014 SC 666]).

13. *In Central Bureau of Investigation v. State of Rajasthan (supra), while adjudicating the question of a Magistrate's power to direct investigation by C.B.I. under Section 156(3) of the Code, the Apex Court, in the context of Section 36 of the Code, observed thus:*

"This means any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of police station and when he so exercise the power he would do it in his capacity as officer in charge of the police station. But when a magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the government."

14. *The above observation comes in aid to solve the legal puzzle we are faced with. The Commissioner of Police could have exercised his jurisdiction under Section 36 of the Code and could have conducted the investigation by himself. But in the absence of any statutory authority to delegate the power of investigation to an inferior Officer, he could not have assigned the case to the CCB unit. Power to delegate investigation to some extent is vested with the Station House Officer who is acting under Section 157(1) of the Code, whereby on receipt of the information he can depute his subordinate officer not below of such rank as the State Government, may direct to proceed to investigate the fact and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. Except the provision at sub-Section (1) of Section 157 of the Code, the concept of delegation of power cannot be perceived either from the Code or Karnataka Police Act. That answers the question raised supra in the beginning of the discussion. Thereby, the order passed by the Commissioner at Annexure 'D' is without authority and propriety. Intervening and transferring the case in the middle of investigation which would have been concluded by this time is illegal. The petition is filed touching the legality of registration of the complaint etc. Though the petitioners are seeking to quash the complaint and FIR itself, the order of the Learned Magistrate passed under Section 156(3) of*

the Code convinces that he has perused the complaint averments and felt it necessary for police investigation and the said order does not call for interference. However, both the complainant and the accused, if aggrieved by the final report of the investigation, will have their opportunity to challenge the said order."

The learned senior counsel in terms of the aforesaid judgment would seek to lay emphasis on the fact that the Commissioner of Police, Bangalore City was a superior Officer who could take up investigation to himself, but had no power to transfer the investigation to another investigating officer. A perusal at the paragraphs relied on by the learned senior counsel would indicate that investigation in **MAGADI SHANKAR RAO KRISHNA MURTHY**'s case was a transfer beyond the jurisdiction. The issue before the co-ordinate Bench was whether the Commissioner of Police could have exercised his jurisdiction under Section 36 of the Cr.P.C. to delegate the power/assign the investigation to CCB unit. The Court holds that the Commissioner of Police could have taken up the investigation to himself, but could not have delegated or assigned the case to CCB. The judgment in the case of **MAGADI SHANKAR RAO KRISHNA MURTHY** is distinguishable on facts without much *ado*.

11. The act of the 2nd respondent, has done in the case at hand, is within his jurisdiction. He has directed transfer of investigation from one Station to another. It is not a case where he has usurped jurisdiction of another officer and transferred the case to altogether a different Station House Officer in a different jurisdiction. The learned senior counsel for the petitioner has strenuously contended that it is not for the complainant to choose the Investigating Officer. The complainant, in the case at hand, has not chosen the Investigating Officer but had complained that investigation was not being conducted in a proper manner. On appreciating this fact, the investigation has been shifted to another Police Station within the same jurisdiction. Therefore, these submissions of the learned senior counsel that it is a transfer and transfer is vitiated by bias are all lacking consideration at this juncture.

12. Learned counsel for the 4th respondent/complainant and the State in unison would submit that the investigation is nearing completion and the Station House Officer of Marathhalli Police Station is ready to file his final report before the concerned Court. Therefore, interfering at this juncture, on this plea of transfer of investigation from one Station to the other, which does not even come under the power exercised under Section 36 of the Cr.P.C. as it is within the jurisdiction and the Additional Commissioner of Police exercising the power being a superior officer of the said area, no warrant of interference is called for. What are alleged are grave offences which would require investigation and the petitioner in the garb of raising a challenge to the transfer is wanting to scuttle investigation. This cannot be permitted, apart from the fact that I find no legal infirmity in the order."

In the light of the aforesaid order considering identical circumstance of change of Investigating Officer, the investigation being transferred to a different Police Station on compelling facts, if it would within the same Division, the superior officer under Section 36 of the Cr.P.C. was empowered to transfer the investigation. Therefore, there is no legal infirmity as is projected by the learned senior counsel for the petitioner taking recourse to Section 36 of the Cr.P.C. Therefore, the submission of alleged error fails to find merit in the light of the aforesaid reasons.

16. The other submission of the learned senior counsel for the petitioner is that the offence is highly improbable for the father to

kill his wife. The same yardstick applies also to the children, that why would they complain against the father. The vivid narration of the daughter in the statement recorded under Section 164 of the Cr.P.C. and the son, of a more vivid description but would clearly mean that the petitioner is to be tried for both the offences. The submission that there is no allegation of demand of dowry is of no avail, as it is trite law that in the absence of demand of dowry also, cruelty can form the fulcrum of the allegation. The allegation, I mean the offence punishable under Section 498A of the IPC. Therefore, the offence under Section 498A of the IPC *prima facie* found and is to be tried.

17. The other offence is the one punishable under Section 302 of the IPC. When the evidence of both the children as quoted hereinabove would pin the petitioner down *albeit, prima facie*, it is understandable as to how this Court would exercise its jurisdiction under Section 482 of the Cr.P.C. on an offence under Section 302 of the IPC against the accused and obliterate the trial. If the children have complained against the petitioner narrating vivid details, it becomes a matter for a full-blown trial, where the

petitioner has to come out clean. Any interference, in the case at hand by quashment of proceedings, would run foul of the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**⁴, wherein it has held as follows:

“..... ..”

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

⁴ (2021) 9 SCC 35

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

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

in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

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

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

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has

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

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

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses,

thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

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

(Emphasis supplied)

Finding the submissions of the learned senior counsel absolutely meritless, there is no warrant to entertain the petition and lend a protective umbrella to the petitioner. The petition draped in imaginary legal infirmities has bereft of any redeeming foundation, therefore, has to meet its dismissal.

18. For the aforesaid reasons, the petition lacking in merit is ***dismissed.***

Interim order if any operating, stands dissolved. Since the issue is of the year 2018, it is necessary that the concerned Court would conclude the proceedings at an outer limit of nine months from the date of receipt of a copy of this order, if not earlier.

Consequently, pending applications if any, also stand disposed.

SD/-

JUSTICE M.NAGAPRASANNA

bkp
CT:MJ