

CASE NO.:
Appeal (crl.) 860 of 2007

PETITIONER:
Manjula Sinha

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 11/07/2007

BENCH:
Dr. ARIJIT PASAYAT C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 860 OF 2007
(Arising out of S.L.P. (Crl.) No.1067 of 2006)
With
CRIMINAL APPEAL NO. 861 OF 2007
(Arising out of S.L.P. (Crl.) No.1714 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Appellant calls in question legality of the order passed by a Division Bench of the Allahabad High Court dismissing petition filed for quashing the First Information Report (in short the 'FIR') dated 30th April, 2005 registered as Crime No. 124 of 2005 for alleged commission of offences punishable under Section 498 A and 406 of the Indian Penal Code, (in short the 'IPC') in Police Station in Sector 39, Noida, District Goutam Budha Nagar.
3. On the basis of complaint filed, proceedings were initiated. The legality of proceedings was questioned before the High Court by a petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). The main stand before the High Court was that even on a bare reading of the FIR, it is clear that alleged commission of offence was not made out so far as the appellant is concerned.
4. The High Court found that the application was to be rejected as no ground was made out for quashing the proceedings. It however directed that the appellant shall not be arrested till submission of the police report. Further condition was stipulated that the appellant has to pay Rs.1000/- per month towards maintenance to the respondent No.4. The order was passed purportedly following the principles set out in this Court in Bodhisattwa Gautanm v. Subhra Chakrabarti (AIR 1996 SC 922).
5. In support of the appeal, learned counsel submitted that even if detailed reading of the complaint is made, ingredients of the alleged offences are not made out so far as the appellant is concerned. The appellant is the step mother of the husband of the complainant. She was staying separately.
6. It is further submitted that if the articles are identified

same shall be returned and therefore the proceedings should not continue.

7. Learned counsel for the respondents supported the order passed by the High Court.

8. Section 482 Cr.P.C. does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See: *Janata Dal v. H. S. Chowdhary* (1992 (4) SCC 305), and *Raghbir Saran (Dr.) v. State of Bihar* (AIR 1964 SC 1)].

10. On a reading of the complaint which appears at page 23

of the paper book, it is clear that there is no allegation so far as the respondent is concerned, so far as it relates to a case covered under Section 498-A IPC. There is no allegation of any torture for dowry so far as the present appellant is concerned. The position is different so far as the allegations in relation to Section 406 IPC is concerned.

11. There are allegations contained in the FIR relating to the applicability of Section 406 IPC. If ultimately the prosecution is unable to substantiate the plea, the results would follow. It is a case where the power under Section 482 Cr.P.C. cannot be exercised so far as the allegations relating to Section 406 IPC are concerned. But as noted, the position is different so far as Section 498-A IPC is concerned. Therefore proceedings stand quashed so far as it relates to the offence punishable under Section 498-A IPC.

12. It is made clear that we have not expressed any opinion on the merits of the case.

13. The appeal is allowed to the extent indicated above.

CRIMINAL APPEAL NO. OF 2007
(Arising out of S.L.P. (Crl.) No.1714 of 2006)

14. Leave granted.

15. Application filed before the High Court related to alleged commission of offences punishable under Section 498-A and 406 of IPC. Undisputedly the charge sheet has been filed and the same was not in question. Charges have also been framed and, therefore, the question of quashing the FIR does not arise.

16. The appeal is accordingly dismissed.