AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 10-08.2021

Pronounced on : 25-10-.2021

CRMP No. 2619 of 2018

- Mohd. Akhtar Mansoori S/o Sheikh Amanullah Mansoori Aged About 34 Years R/o Ward No. 7, Baniya Tola, Post, Police Station And Tehsil- Kotma, District Anuppur Madhya Pradesh., District : Anuppur, Madhya Pradesh

---- Petitioner

Versus

1. State Of Chhattisgarh, District : Raipur, Chhattisgarh
2. Station House Officer Police Station- Kharsiya, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
3. Zarri Naaz Ansari D/o Javed Akhtar Ansari Aged About 30 Years R/o Surya Colony, Hammaal Para Kharsiya , Post, Police Station And Tehsil Kharsiya, District Raigarh Chhattisgarh, Presently Residing At Doctor Colony, Room No.53, Kirodimal Nagar, Police Station Kotra Road, Tehsil - Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondents

CRMP No. 2626 of 2018

1. Mohd. Safdar Mansoori S/o Sheikh Amanullah Aged About 38 Years (Brother In Law) R/o Sanjeevani Nagar, Garha, Post And Tehsil Jabalpur, District Jabalpur, Madhya Pradesh., District : Jabalpur, Madhya Pradesh
2. Shabana Parveen W/o Mohd. Safdar Mansoori Aged About 36 Years (Sister In Law) R/o Sanjeevani Nagar, Garha, Post And Tehsil Jabalpur, District Jabalpur, Madhya Pradesh., District : Jabalpur, Madhya Pradesh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary Department Of Home Affairs, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Station House Officer Police Station Kharsiya District Raigarh, Chhattisgarh. .....Prosecution, District : Raigarh, Chhattisgarh
3. Zarri Naaz Ansari D/o Javed Akhtar Ansari Aged About 30 Years R/o Surya Colony, Hammaal Para Kharsiya, Post, P. S. And Tehsil Kharsiya, District Raigarh, Chhattisgarh. Presently R/o At Doctor Colony, Room No. 53, Kirodimal Nagar, P. S. Kotra Road, Tehsil Raigarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondents

CRMP No. 2639 of 2018

1. Sheikh Amanullah Mansoori S/o Late Mohammad Mustafa Aged About 66 Years , District : Anuppur, Madhya Pradesh
2. Farida Begum W/o Sheikh Amanullah Mansoori Aged About 61 Years R/o Ward No.7, Baniya Tola, Post, Police Station And Tehsil- Kotma, District Anuppur Madhya Pradesh., District : Anuppur, Madhya Pradesh

---- Petitioners

Versus

1. State Of Chhattisgarh District : Raipur, Chhattisgarh
2. Station House Officer Police Station- Kharsiya, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
3. Zarri Naaz Ansari D/o Javed Akhtar Ansari Aged About 30 Years R/o Surya Colony, Hammal Para Kharsiya, Post, Police Station And Tehsil Kharsiya, District Raigarh Chhattisgarh, Presently Residing At Doctor Colony, Room No.53, Kirodimal Nagar, Police Station Kotra Road, Tehsil Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Sarfraj Khan, Advocate.
For Respondents/State	:	Mr. Devendra Pratap Singh, Dy. Advocate General
For respondent No.3	:	Mr. Faisal Akthar, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. Since all the aforesaid three petitions involve a common question of law, they are heard analogously and are being disposed of by this common order.
2. The petitioners have filed the present petitions under Section 482 of Cr.P.C., for quashing FIR in connection with Crime No. 62 of 2018 registered in Police Station Khsiya, District Raigarh for offence punishable under Sections 498-A, 406 and 34 of IPC and its consequential criminal proceedings initiated against them.
3. The brief facts as projected by the petitioners in these petitions are that the petitioner Mohad Akhta Mansoori in CrMP No. 2619 of 2018 is husband of respondent No.3-complainant/wife – Zarri

Naaz Ansari, petitioners in CRMP No. 2626 of 2018 are brother-in-law and sister-in-law of respondent No.3 and petitioners in CRMP No. 2639 of 2018 are father-in-law and mother-in-law of respondent No.3. The marriage of respondent No.3 was solemnized with the petitioner Mohd. Akhtar Mansoori on 6-11-2016 according to the Muslims Rites and rituals Thereafter, the petitioners started treating the respondent No.3 it cruelty and harassment in connection with demand o dowry. On 3-7-2017 the husband of respondent No.3 has pronounced Talaq (thrice) against respondent No.3 and the marriage between the respondent No.3 and her husband is no longer in force. Being aggrieved with the behavior and conduct of petitioner and his relatives, respondent No.3 (complainant wife) has lodged a complaint in the Police Station- Kharsiya, District- Raigarh against the petitioners on the basis of which Police Station-Kharsiya registered FIR being Crime No. 62 o 2018 for commission of offence punishable under Sections 498-A, 406 and 34 of IPC. The contents of FIR reads as under:

> निकाह के पहले कार दिये जाने अन्यथा शादी नही करने की धमकी देकर मानसीक प्रताडित करने से मेरे द्वारा कार कमांक CG 13 V 8705 पंजीयन दिनांक **03.11.2016** फाइनेंस उपरांत अनावेदकगणों की मांग पुरा कर कार मुहैया गई है, कार के ऋण किस्तो की अदायगी भी मेरे तरफ से मेरे पिता, भाई बहनों के द्वारा अपने अपने कमाई के पैसों को जोडकर करते रहें हैं, पर अब आर्थिक तंगी होने के कारण कार लोन के किस्त की रकम भी जमा करने में मै और मेरे परिवार असक्षम होते जा रहें हैं, मेरे नाम की यह कार का आज तक अनावेदकगणों द्वारा अपने बेजा कब्जा में रखा गया है। सगाई, निकाह और निकाह के दीगर सगुन लोग व्यवहार में सभी जरूरी घरेलु समान और उपहार मेरे मायका परिवार वाले के द्वारा पति, सास, ससुर, जेठ जेठानी आदी नजदिकी रिस्तेदारों को भेट स्वरूप दिया गया है, जो आज तक मेरे पति, सास, ससुर के कब्जे में हैं ततबंध में फिलहाल उपलब्ध रसीदों की प्रति संलग्न कर प्रस्तुत कर रही हूं। निकाह के बाद ससुराल में रहते हुए मेहमानों के

मौजुदगी के कारण मुझसे दिखावा व्यवहार ठीक ठीक रखा गया परंतु मेहमानों के जाने बाद मेरे साथ रूप रंग पर की मै काली कल्ललुटी हूं काम वाली बाई जैसी हुं बजारू हूं कहकर ताना मारने लगे, तु हुण्डई कार को फाईनेंस कराई स्वीप्ट कार को क्यों नही कराई और मेरे सारे गहनों व मंहगे कपडों को सास जेठानी ने जबरन लेकर रख लिया मुझे घर पर सजधजकर नही रहना और सजधजकर कर कही आना जाना नही है कोरे कागजो पर भी मेरे पति और ससुर ने यह कहकर मुझसे दस्तखत कराकर रख लिया गया है कि निकाह पंजीयन कराना है हम पत्नि बहु को घर से बाहर नही लेजाते है कागज पर जो लिखना होगा हम लिख लेंगे मेरे पति ने जबरन मेरे अंकसुचियों, प्रमाण पत्रों दस्तावेजों की प्रति तथा साफ्टकापी जिसमें मेरा डिजिटल हस्ताक्षर, अगुठे का डिजिजल निशान भी है दुरूपयोग या मुझे फंसाने के नियत से ससुरालवालों ने अपने पास जबरन रखा लिया गया है। इस तरह से मूझे शारीरिक व मानसिक रूप से प्रताडित करना प्रारंभ कर दिया गया था सगाई के दिन से लेकर निकाह तक और ससुराल और समय समय में मायका खरसिया (रायगढ़) में आके रहने के दौरान एक दहेज के रूप में सोने चांदी के मंहगे और वजनी जेवरात सुखसुविधा के सामन की मांग किये जाने लगे और मांग पुरा नहं करने के कारण मुझे सास ससुर जेठ जेठानी व पति द्वारा मारा पिटा गया तथा बिना 02.07.2017 को जबरन मायका खरसिया भेज दिया गया खरसिया में घर पहुंचने के तुरंत बाद मेरे पति ने मेरे सेलफोन के वाट्सअप के जरिये तलाक देता हूं का मेसेज भेजकर मुझे गंभीर मानसिक प्रताडना दिये जिसकी वजह से आज तक मेरा शारीरिक व मानसिक स्वास्थ्य खराब होता गया खरसिया रायगढ अस्पताल में मैं अपना ईलाज भी करा रही हूं इस तरह मेरे से निकाह कर मेरा शारीरिक व आर्थिक शोषण कर मुझे छोड दिया गया।

4. The FIR further states that after marriage respondent No.3 was tortured not only by her husband/petitioner Mohd. Akthar Mansoori but also by other petitioners and her husband forcefully

sent her to her parental house on 2-7-2021 and thereafter he sent message of Talaq by cellphone which has caused mental torture to her, therefor, she has filed complaint on 25-9-2021 on the basis of her complaint, present FIR has been registered.

5. Learned counsel for the petitioners would submit that the contents of FIR are incorrect and they are falsely roped in the offence, though the marriage between petitioner Mohd. Akthar Mansoor and respondent No.3 has already been dissolved on 3-7-2017. It is further contended by learned counsel for the petitioners that the allegation of respondent No.3 in connection with demand of dowry at her matrimonial ,home (Kotma) is baseless because immediately after the solemnization of marriage, the respondent No.3 went back to her parental house as prevailing practice in India as Gauna and after two days of her marriage it is not feasible that newly wedded bride-groom was tortured by her husband and her in-laws. The petitioners have made all efforts to bring respondent No;3 for discharging her matrimonial duties, but all their efforts went in vain, even though Petitioner Mohd. Akhtar Mansoori has sent money to respondent No.3. In order to harass the petitioners and their family members respondent No.3 made a complaint. Registration of FIR is nothing but an abuse of process of law. After investigation, Police have also registered offence under Section 498-A, 406, 34 of IPC thereafter they submitted final report before the learned Judicial Magistrate First Class which was registered as Criminal Case No. 398/2019 (State of Chattisgarh vs. Mohd. Akhtar Mansoori & others). The police has submitted final report on 23-10-2019. This Court while admitting the petition has granted interim protection stating that “till the next date of hearing the trial Court (JMFC Kharsiya) shall not pronounce the judgment in case No. 359 of 2019. He would further submit that since the petitioner Mohd. Akhtar Mansoori has given Talaq to respondent No.3, therefore, registration of FIR is illegal and against the judgment of Hon'ble Supreme Court in case of **Mohammad Miyan & others Vs. State of Uttar Pradesh & others**, reported in **(2019) 13 SCC 398** wherein

Hon'ble Supreme Court has held in para 5 which is extracted herein-below for convenience.

> "5. We find much substance in the submission made by Mr. Das, learned Senior Counsel appearing for the appellants-accused. Even in the FIR dated 18.8.2015, the complainant-wife has stated that her divorce had taken place about four years back. It is not possible to accept the contention made by learned counsel appearing on behalf of complainant-wife that she made the statement in ignorance of Sharia law. She is a Headmistress and must be credited with due knowledge of her meritorious status. In view of her own averment that she was divorced four years ago, we are of the view that the prosecution is not sustainable under section 498A of the IPC and Sections 3/4 of the Dowry Prohibition Act, 1961"..

6. The learned counsel for the petitioner would also refer the judgment passed by Hon'ble Supreme Court in **Shakson Belthissor vs. State of Kerala**, reported in **(2009)14 SCC 466** wherein Hon'ble Supreme Court has held as under:

> "20. It was fairly agreed at bar that the aforesaid FIR was filed by Respondent No. 2 with the intention of making out a prima facie case of offence under Section 498A of the Indian Penal Code. The charge sheet, which was filed by the police was under Section 498A of the Indian Penal Code. As to whether or not in the FIR filed and in the charge sheet a case of Section 498A IPC is made out or not is an issue, which is required to be answered in this appeal. Section 498A of the IPC reads as follows:
>
> "498A. Husband or relative of husband of a woman subjecting her to cruelty.
>
> Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation-For the purpose of this section, "cruelty" means-
>
> (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

> health whether mental or physical) of the woman; or
>
> (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand".
>
> 21. In the light of the aforesaid language used in the Section, the provision would be applicable only to such a case where the husband or the relative of the husband of a woman subjects the said woman to cruelty. When the ingredients of the aforesaid Section are present in a particular case, in that event the person concerned against whom the offence is alleged would be tried in accordance with law in a trial instituted against him and if found guilty the accused would be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The said section contains an explanation, which defines "cruelty" as understood under Section 498A IPC. In order to understand the meaning of the expression `cruelty' as envisaged under Section 498A, there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

7. Hon'ble the Supreme Court has quashed the offence under Section 498-A of IPC, but offence under Sections 323 and 353 was continued against accused persons, therefore, on the basis of said judgments, he would submit that since the petitioner has already given divorce to respondent No.3 before filing of FIR, therefore, registration of FIR is nothing but an abuse of process of law and subsequent criminal case so far as commission of alleged offence under Section 498-A of IPC is not justifiable and deserves to be quashed.

8. The State has also filed return contending that after registration of FIR, investigation has been done and thereafter return was filed on 17-2-2019 contending that after registration of offence investigation is still going on, therefore, at this juncture, present

petitions are not maintainable. It has been further contended by learned State counsel that in pursuance of respondent No.3 submitted a written complaint to the Police Station Kharsiya, District Raigarh, Police enquired the matter and upon finding *prima facie*, offence, the aforesaid FIR has been registered against the petitioners. After investigation offence under Sections 406, 34 of IPC has also been made out against the petitioners , thereafter final report has been submitted against the petitioners for committed alleged offence under Sections 498A, 406 34 of IPC. It has been further contended by the State that during course of investigation, the statements of complainant respondent No, 3 and other witnesses were also recorded under Sections 161 of Cr.P.C. It has been well settled by Hon'ble Supreme Court that the inherent power under Section 482 of Cr.PC., should be very sparingly and cautiously used only when the court comes to the conclusion that there would manifest injustice or there would abuse of process of court, if such contingency is not available, this court cannot exercise its power under Section 482 of Cr.P.C. This court while hearing the petition cannot appreciate the evidence and material which has been collected during the course of investigation, the petition is not maintainable and in support of his arguments, he has relied upon a judgment of Hon'ble Supreme Court in **State of Andhra Pradesh vs. Golconda Linga Swamy, reported in (2004) 6 SCC 522** wherein Hon'ble Supreme Court has held in para 5 which is extracted herein-below:

> "5. 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 alique concedit, conceditur et id sine quo res ipsa 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 such 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 exercises of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto".

9. The complainant/respondent No.3 has filed her return denying allegation made in the petition contending that the petitioner and his family members from the very next day of the marriage started abusing her for not fulfilling the unwanted demand of dowry. They have tried to dissolve the issue and they have given a car at the time of her marriage. It has been further submitted that sufficient material is already on record before the trial court to prove the guilt of the petitioners, therefore, present petitions are not tenable and deserve to be dismissed. It has been further contended that since the petitioner and respondent No.3 are governed by Shariat Law and as per Shariat Law the

husband has to give “Meher” amount to the wife at the time of giving divorce which was not yet given to her, therefore, Talaq given through social media in Watsapp is not proper and is not legally valid Talaq as per Muslim Law. Petitioner has not followed the procedure of Shariat Law, therefore, Talaq given in Watsapp is not legal. It has been further submitted that respondent No.3 has also filed a complaint under the Protection of Women from Domestic Violence Act, 2005 which is registered as case No; 90 o 2017 before the learned Family Court (Zarinaaz Answari vs. Mohd. Akhtar Mansoori and others) and leaned Family Court vide its order dated 25-1-2018 has directed to pay Rs.5000/- per month for maintenance to respondent No.3 and would submit that since Talaq has not been done as per Shariat Law, therefore, contention of the petitioners that since the petitioner has already given divorce, is not maintainable and the instant petitions deserve to be dismissed by this court.

10. On above factual matrix, the point required to be determined by this court is (i) whether the divorce given by the petitioner Mohd. Akhtar Mansoori is in accordance with Shariat Law and if it has not been given as per Shariat Law, then what is its effect ? (ii) whether judgment passed by Hon’ble the Supreme Court in case of **Shayara Bano vs. Union of India and other connected matters**, reported in **2017 (9) SCC 1** has retrospective effect or not ?.

11. The issue of Triple Talaq came up before Hon'ble the Supreme Court in **Shayara Bano vs. Union of India and other connected matters**, reported in **2017 (9) SCC 1** and the Constitutional bench of Hon'ble Supreme Court finally concluded the issue and has examined the circular issued by All India Muslim Personal Law Board and other relevant provisions of Sharait Law and has held that Triple Talaq is nonest and void, therefore, directed the Central Government to make a law on this subject. Hon'ble Supreme Court while considering the core issue on the subject has held in case of Shayara Bano (supra)

has examined the circular dated 15-4-2016 issued by All India Muslim Personal Law Board and has held in para 391, 392 and 395 which read as under:

> "391. A perusal of the consideration recorded by us reveals, that the practice of 'talaq-e-biddat' has been done away with, by way of legislation in a large number of egalitarian States, with sizeable Muslim population and even by theocratic Islamic States. Even the AIMPLB, the main contestant of the petitioners' prayers, whilst accepting the position canvassed on behalf of the petitioners, assumed the position, that it was not within the realm of judicial discretion, to set aside a matter of faith and religion. We have accepted the position assumed by the AIMPLB. It was however acknowledged even by the AIMPLB, that legislative will, could salvage the situation. This assertion was based on a conjoint reading of Articles 25(2) and Article 44 of the Constitution, read with entry 5 of the Concurrent List contained in the Seventh Schedule of the Constitution. There can be no doubt, and it is our definitive conclusion, that the position can only be salvaged by way of legislation. We understand, that it is not appropriate to tender advice to the legislature, to enact law on an issue. However, the position as it presents in the present case, seems to be a little different. Herein, the views expressed by the rival parties are not in contradiction. The Union of India has appeared before us in support of the cause of the petitioners. The stance adopted by the Union of India is sufficient for us to assume, that the Union of India supports the petitioners' cause. Unfortunately, the Union seeks at our hands, what truly falls in its own. The main party that opposed the petitoners' challenge, namely, the AIMPLB filed an affidavit before this Court affirming the following position:
>
> "1. I am the Secretary of All India Muslim Personal Board will issue an advisory through its Website, Publications and Social Media Platforms and thereby advise the persons who perform 'Nikah' (marriage) and request them to do the following:-
>
> (a) At the time of performing 'Nikah' (marriage), the person performing the 'Nikah' will advise the Bridegroom/Man that in case of differences leading to Talaq the Bridegroom/Man shall not pronounce three divorces in one sitting since it is an undesirable practice in Shariat;
>
> (b) That at the time of performing 'Nikah' (Marriage), the person performing the 'Nikah' will advise both the Bridegroom/Man and the Bride/Woman to

incorporate a condition in the 'Nikahnama' to exclude resorting to pronouncement of three divorces by her husband in one sitting.

3. I say and submit that, in addition, the Board is placing on record, that the Working Committee of the Board had earlier already passed certain resolutions in the meeting held on 15 th & 16th April, 2017 in relation to Divorce (Talaq) in the Muslim community. Thereby it was resolved to convey a code of conduct/guidelines to be followed in the matters of divorce particularly emphasizing to avoid pronouncement of three divorces in one sitting. A copy of the resolution dated April 16, 2017 along with the relevant Translation of Resolution Nos. 2, 3, 4 & 5 relating to Talaq (Divorce) is enclosed herewith for the perusal of this Hon'ble Court and marked as Annexure A-1 (Colly) [Page Nos. 4 to 12] to the present Affidavit." A perusal of the above affidavit reveals, that the AIMPLB has undertaken to issue an advisory through its website, to advise those who enter into a matrimonial alliance, to agree in the 'nikah-nama', that their marriage would not be dissolvable by 'talaq-e-biddat'. The AIMPLB has sworn an affidavit to prescribe guidelines, to be followed in matters of divorce, emphasizing that 'talaq-e-biddat' be avoided. It would not be incorrect to assume, that even the AIMPLB is on board, to assuage the petitioner's cause.

392. In view of the position expressed above, we are satisfied, that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct, the Union of India to consider appropriate legislation, particularly with reference to 'talaq-e-biddat'. We hope and expect, that the contemplated legislation will also take into consideration advances in Muslim 'personal law' – 'Shariat', as have been corrected by legislation the world over, even by theocratic Islamic States.

When the British rulers in India provided succor to Muslims by legislation, and when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind. Measures have been adopted for other religious denominations (see at IX – Reforms to 'personal law' in India), even in India, but not for the Muslims. We would therefore implore the legislature, to bestow its thoughtful consideration, to this issue of paramount importance. We would also beseech different political parties to keep their individual political gains

> apart, while considering the necessary measures requiring legislation.
>
> 395. In view of the different opinions recorded, by a majority of 3:2 the practice of 'talaq-e-biddat' – triple talaq is set aside".

12. Learned counsel for respondent No.3 has also filed a copy of the affidavit which has been filed by the Secretary, All India Muslim Law Boar in Suo Moto Writ Petition (cvil) No. 2 of 2015 in reference to Writ Petition (Civil) No. 118 of 2016 (Shayara Bano vs Union of India and others) and other connected matters in Reference of Muslim Women's Quest for Equality vs. Jamiat Ulama-Hindi and others by annexing the circular by All India Muslim Personal Law Board wherein the procedure of legal divorce has been enumerated to substantiate the contention that if the divorce or Talaq has not been given as per the procedure under Shariat Law, then it is nullity an it cannot be given effect , therefore, respondent No.3 is still wife of the petitioner Mohd. Akhtar Mansoori.

13. Hon'ble Supreme Court while considering the judgment passed by the High Court of Andhra Pradesh in **Zamrud Begum vs. K. Mohd.Haneef**, reported in **2002 SCC online, 1063** has observed that the view taken by Hon'ble the Supreme Court in **Shamim Ara vs. State of UP**, reported in **2002 (7) SCC 518** has been considered and the Hon'ble High Court of Andhra Pradesh in **Zamdud Begum (supra)** is one of the first High Courts to affirm the view adopted in **Shamim Ara (supra)**. The High Court of Andhra Pradesh, after referring to **Shamim Ara (supra)** and all the other decisions mentioned therein, held in para 13 and 17 which read as under.

> "13. It is observed by the Supreme Court in the above said decision that Talaq may be oral or in writing and it must be for a reasonable cause. It must be preceded by an attempt of reconciliation of husband and wife by two arbitrators one chosen from the family of the wife and other by husband. If their attempts fail then Talaq may be effected by pronouncement. The said procedure has not been followed. The Supreme Court has culled out the

same from Mulla and the principles of Mahammedan Law.

17. I am of the considered view that the alleged Talaq is not a valid Talaq as it is not in accordance with the principles laid down by the Supreme Court. If there is no valid Talaq the relationship of the wife with her husband still continues and she cannot be treated as a divorced wife. She can be treated as only a deserted wife".

14. Since the constitutional Bench of Hon'ble Supreme Court has held that the triple Talaq is invalid and illegal, therefore, contention of the petitioner that after divorce/triple Talaq, respondent No.3 cannot file a complaint under Section 498-A of Cr.PC., is not acceptable. Hon'ble igh Court of Jammu and Kashmir in **CRM (M) No. 308 of 2019 (Showkat Hussain vs. Nazia Jeelani**, while considering the judgment passed by Hon'ble Supreme Court in **Shayara Bano (supra)** has held that judgment is retrospective effect and therefore, divorce given in the year 2014 cannot be said to be legally divorce. Hon'ble High Court of Jammu and Kashmir and Ladak at Srinagar, in its judgment decided on 16-8-2021 has held in paras 2 and 3 which are extracted as under.

"2. The short grievance projected by the petitioner in this petition is that this Court disposed of CRM(M) 254/2019 vide its judgment dated 07.11.2019 relying primarily on the judgment of Hon'ble Supreme court in the case of Shayara Bano (supra). It is contended that the said Judgment was pronounced in the year 2017. whereas in the instant case, the divorce i.e. , triple talaq' was pronounced in the year 2014. It is further contended that the judgment in the case of Shayara Bano (supra) could not have been applied to declare the validity of ' triple talaq' pronounced in the year 2014.

3. The argument raised is not tenable for the reason that the judgment rendered in the case of Shayara Bano (supra) , if not made to operate prospectively specifically is to be treated as retrospective and applicable even in the pending cases. The Hon'ble Supreme Court. While declaring the 'triple talaq' as null and void in the eye of law in the case of Shayara Bano (supra) did not specifically make the judgment to operate prospectively and that being the position. The law

> declared by the Hon'ble Supreme Court in Shayara Bano's case (supra) would apply equally to the 'triple talaq' pronounced prior to passing of th said judgment. For this reason, no case is made out to recall the judgment dated 07.11.2019 passed in CRM (M) No. 254/2019".

15. Since the Triple Talaq has been declared illegal by the Constitutional Bench of Hon'ble Supreme Court decided on 22-8-2017, it means the Triple Talaq was not in existence from the very beginning because the judgment of Hon'ble Supreme Court is prospective obligation over the subject. Hon'ble the Supreme Court in **M.A. Murthy vs. State of Karnataka and others, reported in (2003) 7 SCC 517** has held in para 8 which reads as under:

> "8. Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception".

16. Again, Hon'ble the Supreme Court in **K. Madhava Reddy and others vs. State of Andhra Pradesh and others,** reported in (2014) 6 SCC 537 has held in para 10 which reads as under.

> "10. We have heard learned counsel for the parties at length. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in C. Golak Nath & Ors. v. State of Punjab & Anr. AIR 1967 SC 1643, with this Court proceeding rather cautiously in applying the doctrine, was conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to Indian conditions as is evident from the following passage appearing in Golak Nath's case (supra) where this Court laid down the parameters within which the power could be exercised. This Court said:"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The

> doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

17. Hon'ble the Supreme Court in **B.A. Linga Reddy and others vs. Karnataka State Transport Authority and others**, reported n (2015) 4 SCC 515 has held in para 34 which reads as under.

> "34 The view of the High Court in Ashrafulla (supra) has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in P.V.George & Ors. v. State of Kerala & Ors. [2007 (3) SCC 557] held that the law declared by a court will have a retrospective effect if not declared so specifically. Referring to Golak Nath v. State of Punjab [AIR 1967 SC 1643] it had also been observed that the power of prospective overruling is vested only in the Supreme Court and that too in constitutional matters. It was observed "19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto".

18. Therefore, contention of the petitioners that respondent No.3 is a divorced wife as such complaint under Section 498-A of IPC is not acceptable and it is accordingly rejected. Further contention of the petitioners is that the petitioner and his other family members have been falsely roped in the offence as there is no such material against them, cannot be examined at this juncture by this court and contention of learned counsel for the petitioners that respondent No.3 has left her matrimonial house within two days of her marriage voluntarily cannot be examined by this court while hearing the petition under Section 482 of

Cr.P.C. Further contention of the petitioners is that the petitioners have been falsely implicated for commission of offence under Sections 498-A, 406 and 34 of IPC as no offence under Section 498-A, 406 and 34 of IPC is made out and there is no cruelty amid it is incumbent on the part of the petitioners to establish that she is subjected to cruelty but these contention are also of the matter of evidence, therefore, the same cannot be examined by this court.

19. Hon'ble the Supreme Court in **Kaptan Singh Vs. The State of Uttar Pradesh & others**[1], has held as under:-

> "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 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. 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 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order 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 Cr.P.C. 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. Even at this stage also, as observed and held by this Court in 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

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and/or conducting the trial. As held by this Court in the case of ***Dineshbhai Chandubhai Patel*** (Supra) 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 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 the case of ***Dhruvaram Murlidhar Sonar*** (Supra) after considering the decisions of this Court in ***Bhajan Lal*** (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in 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 Cr.P.C. Similar view has been expressed by this Court in the case of ***Arvind Khanna*** (Supra), ***Managipet*** (Supra) and in the case of ***XYZ*** (Supra), 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 Cr.P.C.

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 notarized affidavit of Mamta Gupta – Accused No.2 and Munni Devi under which according to Accused no.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 notarized 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 No.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 notarized 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."

20. Learned counsel for the petitioners has also relied upon the judgment of Hon'ble Supreme court in **Preeti Gupta vs State of Jharkhand, reported in 2010 (7) SCC 667** is not applicable to the facts of the present case as from bare perusal of FIR, prima facie, there is sufficient material available for commission of offence though authenticity and correctness can be examined before the trial court after recording the evidence of the petitioner Mohd. Akhtar Mansoori and complainant/respondent No.3.

21. From the aforesaid legal proposition, it is crystal clear that Triple Talaq has not been given after due process of law as indicated in the judgment of Hon'ble Supreme Court in Shayara Bano (supra) and subsequently, Honorable the Supreme Court in case of Shayara Bano (supra) declared to be illegal and accordingly, it is held that the divorce given by the petitioner Mohd. Akhtar Mansoori to respondent No.3/complainant is illegal as there is sufficient material for commission of offence, as such no case for

interference is made out by this court, therefore, present petitions are liable to be dismissed.

22. This court has granted interim relief on 30-9-2019. The same is vacated. It is directed that if the trial has already been concluded, the trial court may decide the case, in accordance with law. It is made clear this court has not expressed anything on the merits of the case as to whether the offence is made out or not. The averments have been taken into consideration for deciding the present Cr.M.P. only and will not have any bearing over the merits of the case. It is for the trial court to examine the case on the basis of material collected during the course of trial.

23. In view of what has been discussed above and aforesaid observations, the instant petitions are dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju