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RAJIV THAPAR & ORS.

v.

MADAN LAL KAPOOR

(Criminal Appeal No. 174 of 2013)

JANUARY 23, 2013

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[D.K. JAIN AND JAGDISH SINGH KHEHAR, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Quashing of proceedings – Scope – Death of married woman – Complaint by deceased's father – Magistrate summoned the accused-husband and in-laws and committed the case to the Court of Sessions – Sessions Judge discharged the accused-appellants – High Court quashed the discharge order – Justification – Held: On facts, not justified – Post-mortem report, the Central Forensic Science Laboratory's report, as also the inquest report, sufficient to exculpate the appellants from the allegations levelled in the complaint – Merely because the body of the deceased wife had turned blue, not a sufficient basis to infer that she had been poisoned to death – Respondent-complainant himself was uncertain about the manner in which his daughter had allegedly died – Respondent had continued to represent before the SDM, Delhi, that he would produce the mother of the deceased, who knew the facts best of all – Despite that, the mother of the deceased did not appear in the inquest proceedings to record her statement – Telephone bills and other documentary evidence demonstrated that contrary to the allegations made in the complaint, relationship between the two families was cordial and affectionate even at the time of the illness of the wife – The matter needed to have been evaluated, on the basis of one of the parameters laid down in Bhajan Lal case, namely, whether the criminal proceedings initiated by respondent-complainant were actuated by malice and ulterior motive for wreaking vengeance on the accused with a view to

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spite him due to some private/personal grudge – Judicial conscience of the High Court ought to have persuaded it, on the basis of the material examined by it, to quash the criminal proceedings initiated against the appellants-accused – Criminal proceedings against appellants-accused accordingly set aside – Penal Code, 1860 – ss.498A, 304B r/w s.120-B.

Code of Criminal Procedure, 1973 – s.482 – Jurisdiction of the High Court u/s.482, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges – Discussed – Steps delineated to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court u/ s.482.

The wife of appellant no.1 had two bouts of illness. In the first episode, she was diagnosed as suffering from Malaria. She was treated for the same and discharged. Thereafter, she was diagnosed with a large hole in her heart, on the basis of an echo-cardiography. While at a hospital at Surat, she died of a massive heart attack. The body of the deceased was transported by rail to Delhi. The immediate family of appellant no.1's wife including her father (respondent) were present at the time of arrival of the body at Delhi.

The respondent filed a criminal complaint before the Metropolitan Magistrate, Delhi alleging unnatural death of his daughter, by poisoning. Based on the statements made by the respondent-complainant and his son, the Metropolitan Magistrate, Delhi, summoned the accused-husband and in-laws and having formed an opinion, that there was sufficient material to proceed against the accused under Sections 498, 496, 304B read with Sections 120-B of IPC, committed the case to the Court of Sessions. The Additional Sessions Judge, Delhi

- A concluded, that no prima facie case was made out against the appellants/accused either under Section 304B of IPC or under Section 498 IPC and accordingly discharged the appellants/accused. Dissatisfied, the respondent-complainant filed Criminal Revision Petition in the High Court which set aside the order passed by the Additional Sessions Judge, Delhi, and therefore the instant appeal.

Allowing the appeal, the Court

- HELD: 1.1. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution /complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations

levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. [Paras 21, 22] [81-B and F-H; 82-A-F]

1.2. The following steps may be delineated to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

- (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
- (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by

A the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

B If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C.

C Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear

D that the same would not conclude in the conviction of the accused. [Para 23] [82-F-H; 83-A-F]

1.3. In the instant case, the material in the nature of the post-mortem report, the Central Forensic Science Laboratory's report, as also the inquest report, would be sufficient to exculpate the appellants from the allegations and accusations levelled in the complaint. From the documents/material relied upon by the appellants, for exactly the same reasons as have been projected on behalf of the appellants, this Court is satisfied to conclude, that the death of Dr. Monica Thapar was not caused by poisoning. Merely because her body had turned blue, when it arrived at Delhi, is not a sufficient basis to infer that she had been poisoned to death. In fact material relied upon by the appellants is sufficient to condemn the factual basis of the accusation as false. [Paras 26, 27] [85-E-G]

1.4. It also needs to be noticed, that Madan Lal Kapoor (the respondent-complainant) took a

summersault before the Additional Sessions Judge, Delhi by alleging, that Dr. Monica Thapar had been strangled by the appellants, (even though the assertion in the complaint was, that she had been poisoned to death). To determine the veracity of the allegation of strangulation, as the cause of her death, the Additional Sessions Judge, Delhi summoned Dr. L.T. Ramani, Chief Medical Officer, Civil Hospital, New Delhi and Dr. Amit Banerjee, Professor, Cardiothoracic Surgery, G.B. Pant Hospital, New Delhi (members of the Medical Board which had conducted the post-mortem examination) to clarify the altered accusation levelled by Madan Lal Kapoor. The aforesaid doctors, as is apparent from the order dated 7.8.1999 passed by the Additional Sessions Judge, Delhi, opined in the negative. They affirmed, that the death of Dr. Monica Thapar had not been caused by strangulation. This Court is therefore satisfied to affirm, that the death of Dr. Monica Thapar has not been shown to have been caused by strangulation. [Para 28] [85-H; 86-A-E]

1.5. Telephone bills demonstrate, that phone calls were regularly made from the residence of Rajiv Thapar (appellant no. 1), to the maternal family of Dr. Monica Thapar. The family of the husband of Dr. Monica Thapar was in consistent and regular contact with the other family members also. This relationship is shown to have been subsisting even at the time of the illness of Dr. Monica Thapar which proved to be fatal. Of utmost importance is a letter written by Rajiv Kapoor (the brother of the deceased, and the son of Madan Lal Kapoor, the respondent-complainant). In a letter dated 22.9.1992, just four days before the death of Dr. Monica Thapar (on 26.9.1992), Rajiv Kapoor showered praise on the immediate family of Rajiv Thapar residing at Delhi. His letter to his sister describes her in-laws in Delhi, as "very affectionate and very caring". The telephone bills, as

- A also the letter addressed by Rajiv Kapoor to his sister (Dr. Monica Thapar), are materials of sterling quality. Neither of the said materials has been controverted, either on veracity or on truthfulness. All this, would undoubtedly and inevitably result in concluding, that the relationship
B between the two families was cordial and affectionate. Clearly contrary to what has been alleged in the complaint. [Para 29] [86-F-H; 87-A-C]

- 1.6. It is conclusive from the facts and circumstances of the case exhaustively discussed in the foregoing
C paragraphs, that all the steps delineated in the paragraph 1.2 above, can be answered in the affirmative, on the basis of the material relied by the accused, more particularly, the post-mortem examination report dated 28.9.1992 conducted by a Medical Board comprising of
D four doctors, whose integrity has not been questioned by the respondent-complainant; the chemical analysis findings contained in the Central Forensic Science Laboratory's report dated 9.2.1993 which has not been disputed by the respondent-complainant; the inquest
E report of the SDM, Delhi, dated 6.7.1993, findings whereof have been painstakingly recorded by involving the respondent-complainant; the letter of Rajiv Kapoor (the brother of the deceased) dated 22.9.1992 addressed to Dr. Monica Thapar just four days before her death, the
F contents and authenticity whereof are not subject matter of challenge at the hands of the respondent-complainant; and finally, the telephone bills produced by the appellants-accused substantiating consistent and regular contact between the rival families, which have not been
G questioned. This Court, therefore, has no hesitation in concluding, that the judicial conscience of the High Court ought to have persuaded it, on the basis of the material examined by it, to quash the criminal proceedings initiated against the appellants-accused. [Para 31] [87-F-H; 88-A-C]
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1.7. From the narration of the facts recorded above, A
it emerges, that even though the respondent-complainant
Madan Lal Kapoor, in his complaint dated 6.7.1993,
adopted a clear and categoric stance, that his daughter
Dr. Monica Thapar had been poisoned to death, before B
the Additional Sessions Judge, Delhi, the respondent-
complainant ventured to suggest, that the appellants-
accused had strangled her. The Additional Sessions
Judge, Delhi, summoned two of the doctors who were
members of the Medical Board which had conducted the
post-mortem examination, and sought clarifications from C
them. He also recorded the statement of one of the said
doctors. The Additional Sessions Judge, thereupon,
ruled out the plea of strangulation. When the respondent-
complainant himself was uncertain about the manner in
which his daughter had allegedly died, the High Court D
should have viewed the matter keeping in mind the
likelihood of the hurt caused to a father who had lost his
daughter within one year of her marriage. The matter
needed to have been evaluated, on the basis of one of
the parameters laid down in *Bhajan Lal* case, namely, E
whether the criminal proceedings initiated by Madan Lal
Kapoor (the respondent-complainant) were actuated by
malice and ulterior motive for wreaking vengeance on the
accused with a view to spite him due to some private/
personal grudge. There is yet another reason emerging
from the facts of the case which needed to be kept in F
mind. Madan Lal Kapoor (the respondent-complainant)
had continued to represent before the SDM, Delhi, that
he would produce the mother of the deceased, who knew
the facts best of all. Despite that, the mother of the
deceased did not appear in the inquest proceedings to G
record her statement, even though a number of
opportunities were afforded to the respondent-
complainant to produce her. The permissible inference is
that he was himself not privy to the facts. The fact that
the mother of the deceased had not appeared to record H

A a statement against the appellants-accused has to have some reason/justification. Would a mother who believes that her daughter had been poisoned/strangled, restrain herself from recording her statement, despite the persuasion of her husband? Probably not. In a factual situation not as clear as the one in hand, facts such as these, could be taken into consideration by a High Court for recording its satisfaction, on the parameters formulated above. [Para 32] [88-E-H; 89-B-F]

C 1.8. The criminal proceedings against the appellants-accused are accordingly set aside. The order of the High Court is accordingly also set aside, but on grounds different from those taken into consideration by the High Court. [Para 33] [89-F-G]

D *Satish Mehra v. Delhi Administration* (1996) 9 SCC 766: 1996 (4) Suppl. SCR 197; *State of Orissa Vs. Debendra Nath Padhi* (2005) 1 SCC 568: 2004 (6) Suppl. SCR 460: *Suresh Kumar Tekriwal Vs. State of Jharkhand*, (2005) 12 SCC 278; *State of Maharashtra Vs. Som Nath Thapa*, (1996) 4 SCC 659: 1996 (1) Suppl. SCR 189; *State of M.P. Vs. Mohanlal Soni* (2000) 6 SCC 338; *State of A.P. Vs. Golconda Linga Swamy* (2004) 6 SCC 522: 2004 (3) Suppl. SCR 147; *Rukmini Narvekar Vs. Vijaya Satardekar & Ors.* (2008) 14 SCC 1: 2008 (14) SCR 271; *State of Haryana & Ors. Vs. Bhajan Lal & Ors.* 1992 Suppl. (1) SCC 335: 1990 (3) Suppl. SCR 259 – referred to.

Case Law Reference:

	1996 (4) Suppl. SCR 197	referred to	Para 17, 18
G	2004 (6) Suppl. SCR 460	referred to	Para 17, 18, 20
	(2005) 12 SCC 278	referred to	Para 17
	1996 (1) Suppl. SCR 189	referred to	Para 17

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(2000) 6 SCC 338 referred to Para 17 A

2004 (3) Suppl. SCR 147 referred to Para 17

2008 (14) SCR 271 referred to Para 20

1990 (3) Suppl. SCR 259 referred to Para 32 B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 174 of 2013.

From the Judgment & Order dated 08.05.2008 of the High
Court of Delhi at New Delhi in Criminal Revision Petition No. C
42 of 2000.

Suryakant Singla, Ajay Veer Singh, R.K. Verma, Atul
Agarwal, Shagun Bhatnagar, U.R. Bokadia, Ashish Saini,
Mohd. Irshad Hanif for the Appellant. D

Shree Pal Singh, Rahul Singh, K. Sita Rama Rao for the
Respondent.

The Judgment of the Court was delivered by E

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

2. Rajiv Thapar (appellant no. 1 herein) married Dr. Monica
Kapoor on 30.11.1991. After her marriage, Dr. Monica Thapar
got admission in a Post Graduate Diploma course in F
Gynaecology (DGO) at Medical College, Surat, in June 1992.
Accordingly, she started working as a Resident at the aforesaid
Medical College. At his own request, Rajiv Thapar, who was
(and still is) a member of the Indian Revenue Services, was
transferred from Ahmedabad to Surat. On 16.9.1992, while the
husband and wife were living at Surat, Dr. Monica Thapar fell G
ill. For her treatment, she was admitted to Mahavir Hospital,
Surat. She was diagnosed as suffering from Malaria. Having
been treated for the same, she was discharged on 20.9.1992.
Two days thereafter, Dr. Monica Thapar again fell ill on H

- A 22.9.1992. This time, she was taken to Medical College, Surat i.e., the hospital where she was herself working as a Resident. She was first examined by a radiologist, and thereafter, by Dr. Girish Kazi, a cardiologist. It was suspected, that she has a hole in her heart. Based on the aforesaid diagnosis, Dr.
- B Dumaswala, another cardiologist, conducted Doppler echo-cardiography. The said echo-cardiography confirmed the presence of a large hole in her heart. On the advice of doctors who attended on Dr. Monica Thapar at Medical College, Surat, she was shifted to Urmil Heart and Lung Centre, Surat, on
- C 24.9.1992. While at Urmil Heart and Lung Centre, Surat, Dr. Monica Thapar allegedly suffered a massive heart attack on 26.9.1992. The same supposedly proved fatal.

3. The factum of death of Dr. Monica Thapar was conveyed to the immediate family of Rajiv Thapar, as well as to the family
- D of the deceased. A decision was taken to cremate the dead body at Delhi. Accordingly, after embalming the body of Dr. Monica Thapar, it was transported by rail to Delhi on 27.9.1992. The immediate family of Dr. Monica Thapar including her father Madan Lal Kapoor (respondent-complainant herein) were
- E present at the time of arrival of the body at Delhi.

4. Madan Lal Kapoor made a complaint to the Police Control Room alleging, that he suspected that his daughter had been poisoned. This suspicion was based on the fact, that the
- F body had turned blue. On the aforesaid complaint, the Sub-Divisional Magistrate, Delhi, in exercise of powers vested in him under Section 176 of the Code of Criminal Procedure (hereinafter referred to as, the Cr.P.C.), initiated inquest proceedings. In the first instance, the body of the deceased
- G was subjected to a post-mortem examination, for which the following Medical Board was constituted:-

- (i) Dr. Bharat Singh, Medical Superintendent, Civil Hospital, Delhi.

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- (ii) Dr. L.T. Ramani, Chief Medical Officer, Civil Hospital, Delhi. A
- (iii) Dr. Beena Malhotra, Professor, Pathology, G.B. Pant Hospital, New Delhi.
- (iv) Dr. Amit Banerjee, Professor, Cardiothoracic Surgery, G.B. Pant Hospital, New Delhi. B

The Medical Board came to the conclusion, that Dr. Monica Thapar had died of cardiac decomposition. The final opinion of the Medical Board, was recorded in a report dated 28.9.1992, in the following words:- C

"OPINION In view of the clinical reports submitted and post mortem findings observed, the Board of Directors is of the opinion that, death is consequent to cardiac decompensation due to enlarged atrial septal defect & pulmonary hypertension. No definite opinion can be given about falciparum Malaria, histopathological assessment. D

Viscera is preserved for chemical analysis as desired by SDM. Time since death is about 48 hours and is consistent with the history." E

(emphasis is ours)

During the post-mortem examination, samples from the stomach, intestine, liver, spleen, kidney and blood of the deceased's body were taken. These samples were sent for chemical examination to the Central Forensic Science Laboratory, New Delhi. The report of the Forensic Laboratory dated 9.2.1993, recorded the following conclusions:- F G

"SPECIFICATION OF THE ARTICLE CONTAINED IN THE PARCEL

1. Parcel contained: H

- A (a) One wide-mouth bottle containing stomach, intestine with contents, Exhbt 1a.
- (b) One wide mouth bottle containing liver, spleen & kidney, Exhbt 1b.
- B (c) One phial containing few drops blood, Exhbt 1c.

xxx xxx xxx

RESULTS OF ANALYSIS

- C The Exhibit nos. 1a, 1b and 1c gave negative tests for common poisons."

It is therefore apparent, that the Central Forensic Science Laboratory, New Delhi, having analysed the samples from the stomach, intestine, liver, spleen, kidney and blood, concluded that the same did not contain any "common poison".

- D
5. Insofar as the inquest proceedings initiated by the Sub-Divisional Magistrate, Delhi (hereinafter referred to as the SDM, Delhi) are concerned, it would be relevant to mention, that
- E Madan Lal Kapoor (the respondent-complainant herein) the father of the deceased, in the first instance, refused to record any statement before the SDM, Delhi, on the ground that he would record his statement only after the receipt of the post-mortem report. Even on the receipt of the post-mortem report,
- F the said Madan Lal Kapoor and even his son Rajiv Kapoor, refused to record their statements before the SDM, Delhi, on the assertion, that the mother of the deceased knew the facts best of all, and as such, her statement needed to be recorded first of all. It was pointed out, that her statement could not be
- G recorded immediately because she was in a state of shock. It may be noted, that neither the mother nor the brother of Dr. Monica Thapar appeared before the SDM, Delhi, to record their statements. Madan Lal Kapoor had sought time thrice, from the SDM, Delhi, to get the statement of his wife recorded.
- H Madan Lal Kapoor, father of the deceased, however, eventually

recorded his statement before the SDM, Delhi, even though the mother of the deceased had not appeared before the Magistrate to record her statement. A

6. The SDM, Delhi, during the course of inquest proceedings, recorded the statements of the following accused persons:- B

- (i) Rajiv Thapar (husband of the deceased; appellant no. 1 herein).
- (ii) Kusum Thapar (mother-in-law of the deceased; appellant no. 5 herein). C
- (iii) Sangeeta Thapar (wife of the brother-in-law of the deceased; appellant no. 4 herein).

In addition, the SDM, Delhi, recorded the statement of Dr. Pritu Dhalaria (a colleague of the deceased at Medical College, Surat). Insofar as the accusations and counter allegations are concerned, it is not essential to refer to the statements of any of the rival parties. It is however, appropriate to refer to the statement of Dr. Pritu Dhalaria. Since the same is not available on the record of the case, reference thereto in the inquest report, is being extracted hereunder:- D E

"Statement of Mr. Pritu Dhalaria

Sh. Pritu Dhalaria stated that Monika Thapar was known to him from the date she got admission in the Medical College in June, 92. And he regards her as his elder sister. He further stated that both Monika and Rajeev were happy and living a happy married life. On 17th September, 1992, he came to know that Monika was ill and admitted in the Mahavir Hospital. In the evening of 17.9.1992, when he met Monika he came to know that she was suffering from Malaria. And on 24.9.1992, he came to know that she was admitted in the Urmil Heart Hospital. He further stated after Echo-Cardiography doctor declared that F G H

- A Monika was suffering from A.S.D. (Larger Hole in Heart) and pulmonary Hypertension. He stated that on 26.9.1992, at about 2.00-2.15 p.m., Monika's situation became serious. And inspite of all attempts of doctors, she got heart attack and died on 3.30 p.m. He also stated that
- B the MS of Civil Hospital, Surat, Dr. Khanna was present alongwith the other doctors at that time."

(emphasis is ours)

7. The statement of Dr. Pritu Dhalaria fully coincides with
- C the version expressed by the appellants-accused. That Dr. Monica Thapar had two bouts of illness. In the first episode, she was diagnosed as suffering from Malaria. She was treated for the same and discharged. Thereafter, she was diagnosed with a large hole in her heart, on the basis of an echo-
- D cardiography. She died of a massive heart attack on 26.9.1992. At the time of her death, Dr. Khanna and other doctors of the Civil Hospital, Surat, were present.

8. The SDM, Delhi, in his inquest report dated 6.7.1993,
- E recorded the following conclusions:-

"Conclusion

- F Allegation levelled by Shri Madan Lal Kapoor, father of the deceased regarding harassment and dowry death, it appears that allegation are not correct in the light of the fact of Natural death in the statements the husband and in laws of the deceased produced photocopies of letters written by Sh. Madan Lal Kapoor and Rajiv Kapoor. Perusal of the letter shows that both the families enjoyed
- G a normal happy relationship and not an abnormal and strained relation till the death of Monika.

- Sh. Rajeev Thapar has produced copy of telephone Bill of residential phone shows the Telephone Cells are
- H made to Madan Lal phone No.574390 at Mohali Chandigarh on 17.09.92, 21.09.92, 24.09.92 and 25.09.92

during the course of illness of Monika

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Sh. Rajeev Kapoor, the brother of the deceased well aware of the situation of Monika as per his letter dated 22nd September, 92 and at that time the families are enjoying a very good relationship. So it is not possible in these circumstances that Monika was harassed by her in-laws. The few lines as under:-

B

"How are you Now? I hope by now you will have recovered from Malaria. We should have faith in God. Please give top priority to your health.

C

Off and on I go to Janakpuri, all are very nice there, very affectionate and very caring. You must be knowing that Sanjay Bhai Saheb have been promoted to the rank of Squadron Leader..

D

The brother is no likely to praise the family of his sister's in-laws in case his sister is being harassed for dowry.

Statement of Sh. Pritu, Colleague of Mrs. Monika, also shows that Monika and Rajiv enjoyed a very happy and cordial relationship, which also shows that allegations of harassment does not appear to be correct. According to the statements given before me Monika stayed with her in-laws in Delhi only for 4-5 days. Hence the charged of harassment levelled does not appear to be correct. From the statement and evidence produced before me, it does not appear that she was being harassed. Report of Sh. S.K. Pathi M.d. Radiologist during the treatment of Monika.

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F

"Mild Cardiac enlargement with dilated pulmonary vessels and evidence of Pulmonary Dedema. Advise: Echocardiography."

G

Report of Dr. J.C. Damaswala M.D. during the treatment of Monika.

H

A "Large osteum secundum ASD Measuring 3.0 cm with Ltd. To Rt. Shunt on colour flow and conventional Doppler."

Death certificate issued by Urmil Heart and Lung Centre:-

B Cause of Death: Cardio-Respiratory arrest due to Malaria ASD C Pulmonary Hypertension.

C The post-mortem of the dead body reveals that death is due to Cardiac de-compensation due to enlarged atrial Septal Defect and pulmonary Hypertension (As per board of doctors)

The CFSL report of the viscera reveals negative tests for common poison.

D Inquest proceedings started on 27.09.1992 and till now mother of the deceased has not come forward to give her statement. Father of the deceased visited SDM office three times but never brought his wife for recording statement. Now there is no point in waiting for her statement when death is proved natural and beyond any doubt.

E The case of the death is clearly determined to be natural inquest proceedings under Section 176 Cr.PC may be closed as foul play in the death of Smt. Monika Thapar is completely ruled out and the allegation made in the PCR called on 29.09.1992 have not been turned out by the evidence on record.

Sd/-

Sub-Divisional Magistrate, Kotwali, Delhi.

G 6.7.1993"

H A perusal of the inquest report reveals that the SDM, Delhi, concluded that "... foul play in the death of Smt. Monika Thapar is completely ruled out..." The SDM, Delhi, also held "...death

is proved natural and beyond any doubt..."

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9. On 29.9.1992, Madan Lal Kapoor (the respondent-complainant), father of the deceased Dr. Monica Thapar, filed a complaint before the Commissioner of Police, Delhi. Prior thereto, on the same issue, he had filed similar complaints before the Police Commissioner, Surat, Police Officer Incharge, Umra Police Station, Athwa Lines, Surat and Dy. Commissioner, Athwa, Crime Women Cell, South Moti Bagh, Nanakpura, New Delhi. The aforesaid complaints had been filed by the father of the deceased praying for registration of a First Information Report, interalia, under Sections 304B and 498A of the Indian Penal Code. Since the complaints filed by Madan Lal Kapoor did not bear any fruitful result, he filed a criminal complaint before the Metropolitan Magistrate, Delhi on 6.7.1993 alleging unnatural death of Dr. Monica Thapar, by poisoning. Relevant portion of the complaint made by Madan Lal Kapoor (the respondent-complainant) is being extracted hereunder:-

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"10. That in the second week of September, 1992, accused no.1 Rajiv Thapar called his mother from Delhi, on the false pretext that Monika was pregnant and needed care. As a matter of fact, it was in the pursuance of the conspiracy hatched by the accused themselves to do away with the life of Monika in some mysterious manner and on the pretext the mother of Rajiv Thapar accused no.1 was called from Delhi, and sometimes thereafter on that pretext she was admitted in some hospital of their choice, where the conspiracy could be implemented.

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11. That on 26.9.1992 the complainant enquired on telephone from accused no.2 about the welfare of his daughter but now she was quite alright and there was nothing worry about her. The complainant enquired from him about the details of her illness and hospital where she was admitted, but accused no.2 did not disclose as the voice of Mr. Thapar accused no.2 was some what in co-

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A herent on the phone, the complainant suspected something wrong, when the complainant told him that he along with his wife was going to Surat, accused no.2 told him that there was no need of going and everything was alright, but when the complainant told him in clear term that he
B apprehended something wrong regarding the illness of his daughter, on which accused no.2 told the complainant on phone that Monika had expired.

C 12. That accused no.2 in conspiracy with his co-accused did not disclosed the kind of illness, of the treatment she was given with a criminal intention that the complainant and his wife may not able to see their daughter and give her proper treatment. Mrs. Monika was not suffering from any disease. Of course, due to constant harassment, torture,
D physical and violent and mental torture, her health had broken down and she fell ill. Her death was due to constant torture for not meeting the illegal demand of a Maruti Car.

E 13. That the dead body of Monika was brought to Delhi under mysterious circumstances, no permission was obtained for taking dead body from Surat to Delhi in the train.

F 14. That the complainant and his wife reached Delhi and saw some poisonous substance had been administered to her, on this report of the complainant, the post-mortem was conducted at Delhi.

G 15. That the complainant was moved hell and earth in the matter. He has given complaint to police Commissioner, Surat. Deputy Commissioner, Athwa Crime Women Cell, South, Moti Bagh, Nanakpura, New Delhi, Police Officer Incharge, Umra , Police Station, Athwa Lines, Surat and another authority; but no action has been taken, even the copy of the Post Mortem Report has not been supplied to the complainant.

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16. That the death of Mrs. Monika took place within a year of her marriage under mysterious circumstances on account of demand of dowry which demand was not met and thereafter she was tortured mentally and physically and leading to her illness and in that condition she was administered some poisonous matter. The accused have committed serious offences under Sections 304B/120B/498A/109 I.P.C. They be tried according to law and convicted.

Dated 6.7.93

Sd/-
Madan Lal Kapoor
Complainant"
(emphasis is ours)

10. The complaint extracted above, reveals mere aspersions, based on suspicion. The complaint did not express any concrete fact disclosing how the appellants-accused were responsible for having taken his daughter's life. In fact, the narration of facts hereafter reveal, the shifting stance of the father of the deceased, about the cause of his daughter's death. On 24.5.1995, Madan Lal Kapoor (the respondent-complainant) examined himself and his son Rajiv Kapoor before the Metropolitan Magistrate, Delhi in order to substantiate the allegations levelled by him in respect of the unnatural death of his daughter Dr. Monica Thapar. Based on the statements made by Madan Lal Kapoor (the respondent-complainant) and his son Rajiv Kapoor, the Metropolitan Magistrate, Delhi, vide order dated 24.8.1995, summoned the accused. The Metropolitan Magistrate, Delhi, while summoning the accused, recorded the following observations:-

"It is further alleged that at the time of her death she was doing Diploma in Gynaecology in territories at Surat where his son in law was employed. The complainant did not receive any telephone call either from his daughter or son

A in law and he therefore rang up to Ramesh Thapar at Delhi to enquire about the welfare of his daughter and Ramesh Thapar told him on telephone that his wife Kusum Thapar had been called to Surat to look after his daughter as she was said to be pregnant but subsequently she was aborted.

B The complainant enquired from him as to the particulars of the hospital where she was admitted and what was the ailment she was suffering from, she replied that her daughter was quite all right and he should not worry about her welfare again insisted to given particulars of the hospital and the complainant suspected that her in-laws were not behaving with her properly and were harassing, therefore, he insisted that he himself and his wife shall go to Surat and he told him that he suspected some foul play in the matter on which Ramesh Thapar told him from Delhi that his daughter Monika has already expired, and he enquired as to where she will be cremated. The accused brought the dead body of his daughter from Surat to Delhi but they did not allow him and his family members to see the dead body but on their insistence, they saw the dead body of his daughter and he saw that the face and mouth of his daughter was blue. He suspected that her daughter has been given some poisonous matter, as a result of which she had died. He informed the police and the police came and got the post mortem of the dead body conducted, but thereafter nothing was done by police in this matter. He sent a registered letter to the Police Commissioner, Delhi and he went to Surat and filed a complaint before the Police Commissioner but nothing was done. The complainant suspect that his daughter has been admitted because his daughter had not brought sufficient dowry according to the status and had also failed to fulfill the demands of above named accused persons of bringing dowry and Maruti Car and cash.

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I have carefully considered the argument put forward

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by Ld. Counsel for complainant. I have also carefully gone through the complaint and have carefully considered the preliminary evidence adduced by the complainant in support of his case, and from the material on record in my considered opinion, there are sufficient grounds for proceedings against all the accused persons for committing offence punishable u/s. 304B/498A/406/120B IPC.

Accordingly, I order that accused Rajiv Thapar, Ramesh Thapar, Sangeet Thapar and Mrs. Kusum Thapar be summoned for 19.12.1995 on filing of PF."

11. The appellants assailed the aforesaid summoning order dated 24.8.1995, by filing a petition under Section 482 of the Cr.P.C. before the High Court of Delhi (hereinafter referred to as, the High Court). The challenge raised was primarily on the ground, that Madan Lal Kapoor (the respondent- complainant) had suppressed vital material, in his complaint. It was alleged, that the complainant did not disclose the particulars of the post-mortem examination, the report of the Central Forensic Science Laboratory, as also, the inquest report. The High Court dismissed the aforesaid petition summarily on the premise, that the same had been prematurely filed. Accordingly, liberty was granted to the appellants to move the trial Court, if they were so advised, for seeking a recall of the summoning order (dated 24.8.1995). Immediately, on the disposal of the petition by the High Court, the appellants moved an application before the Metropolitan Magistrate, Delhi, praying for a recall of the summoning order dated 24.8.1995. The aforesaid application was dismissed by the Metropolitan Magistrate, Delhi on 23.5.1998 by observing that "... I am of the opinion that at this stage, there is no ground to review or recall the order dated 24.8.1995 passed by my L.D. Predecessor, whereby he summoned the accused for the above stated offences after taking cognizance..."

12. Thereupon, the Metropolitan Magistrate, Delhi,

- A recorded preliminary evidence. Based thereon, and having formed an opinion, that there was sufficient material to proceed against the accused under Sections 498, 496, 304B read with Sections 120-B of the Indian Penal Code, the Metropolitan Magistrate, Delhi, committed the case to the Court of Sessions,
- B as the offence under Section 304B is exclusively triable by a Court of Sessions.

13. While examining the matter further, with the pointed object of either discharging the accused (under Section 227 of the Cr.P.C.) or framing charges against them (under Section 228 of the Cr.P.C.), the Additional Sessions Judge, Delhi took notice of the fact that Madan Lal Kapoor (the respondent-complainant) had not brought the following record/material/documents to the notice of the Metropolitan Magistrate, Delhi:-

- D (i) The post-mortem report dated 28.9.1992.
- (ii) The inquest report dated 6.4.1993.
- (iii) The correspondence made by the respondent and his son.

E The Additional Sessions Judge, Delhi also felt, that the Metropolitan Magistrate, Delhi, had not fully complied with the provisions of Section 202 of the Cr.P.C. (requiring him to enquire into the case himself). Therefore, the Additional

F Sessions Judge, Delhi examined the allegations made in the complaint in conjunction with all of the aforesaid material.

14. Since the learned counsel representing Madan Lal Kapoor (the respondent-complainant) had raised an additional plea (before the Additional Sessions Judge, Delhi), that the deceased was also suspected of having been strangled to death, the Additional Sessions Judge, Delhi summoned Dr. L.T. Ramani and Dr. Amit Banerjee (who were members of the Medical Board, which had conducted the post-mortem examination). The Additional Sessions Judge, Delhi, sought

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clarifications on the allegations of strangulation, from the two doctors. The Court also recorded the statement of Dr. Amit Banerjee. A

15. The Additional Sessions Judge, Delhi then heard detailed arguments on charge. Upon consideration, the Additional Sessions Judge, Delhi, recorded detailed findings, which are being summarized hereunder:- B

- (i) The inquest proceedings conducted by the SDM, Delhi, which interalia contained the broad facts of the married life of the deceased, were inconsistent with the theory of harassment extracted in the complaint. C
- (ii) The accused Rajiv Thapar, husband of Dr. Monica Thapar (deceased) had been seeking medical advice, and had been getting the deceased's medical treatment at Surat, whereupon it came to be discovered, that she had a large hole in her heart. D
- (iii) The Medical Board which conducted the post-mortem examination on the body of the deceased, confirmed the conclusion certified by Urmil Heart and Lung Centre, Surat, that her death occurred because of cardiac de-compensation, and that Dr. Monica Thapar had died a natural death. E F
- (iv) The plea of strangulation raised on behalf of the complainant was held to be unsubstantiated consequent upon the clarification rendered by Dr. L.T. Ramani and Dr. Amit Banerjee. G
- (v) The post-mortem report and the Central Forensic Science Laboratory's report, which recorded a negative opinion on poisoning, were taken into consideration to conclude, that the death of Dr. Monica Thapar was not due to poisoning. H

A (vi) The statement made by Dr. Pritu Dhalaria, a
colleague of the deceased at the Medical College,
Surat, referred to in the inquest proceedings
(relevant portion extracted above), was relied upon
to disbelieve the theory of foul play, in the death of
B Dr. Monica Thapar.

(vii) Based on the facts recorded in the inquest report,
as also in the statement of Dr. Pritu Dhalaria, that
Dr. Monica Thapar had died after her admission
and treatment in the Urmil Heart and Lung Centre,
C Surat, it was deduced, that Rajiv Thapar, the
husband of the deceased could have neither
strangled nor poisoned the deceased, while she
was admitted for treatment at the Urmil Heart and
Lung Centre, Surat.

D Based, interalia, on the aforesaid evaluation of the complaint
filed by Madan Lal Kapoor (the respondent-complainant), the
Additional Sessions Judge, Delhi concluded, that no prima
facie case was made out against the appellants/accused either
E under Section 304B of the Indian Penal Code or under Section
498 of the Indian Penal Code. The Additional Sessions Judge,
Delhi, accordingly discharged the appellants/accused by an
order dated 7.8.1999.

F 16. Dissatisfied with the order dated 7.8.1999 passed by
the Additional Sessions Judge, Delhi, Madan Lal Kapoor (the
respondent-complainant) filed a Criminal Revision Petition
(bearing no. 42 of 2000) in the High Court. The aforesaid
Criminal Revision Petition was dismissed in default on
11.8.2005. The order dated 11.8.2005 was assailed through
G a Special Leave Petition (bearing no. SLP (Crl.) no. 3303 of
2006) before this Court. The aforesaid Special Leave Petition
was allowed by this Court on 31.8.2007. The matter was
remanded back to the High Court for adjudication on merits. It
is thereupon, that the High Court passed the impugned order
H dated 8.5.2008, setting aside the order dated 7.8.1999 passed

by the Additional Sessions Judge, Delhi. The instant order dated 8.5.2008 is the subject matter of challenge in the present appeal. A

17. A perusal of the order of the High Court would reveal that the Additional Sessions Judge, Delhi, had primarily relied on certain observations made in the judgment rendered by this Court in *Satish Mehra Vs. Delhi Administration*, (1996) 9 SCC 766:- B

"15. But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself" C D

Madan Lal Kapoor (the respondent-complainant), before the High Court, had relied upon the judgment in *State of Orissa Vs. Debendra Nath Padhi* (2005) 1 SCC 568, to contend that the judgment relied upon by the Additional Sessions Judge, Delhi, having been overruled, had resulted in an erroneous conclusion. For the same proposition, reliance was placed on the judgment of this Court in *Suresh Kumar Tekriwal Vs. State of Jharkhand*, (2005) 12 SCC 278. On behalf of the complainant, reliance was also placed on the decision in *State of Maharashtra Vs. Som Nath Thapa*, (1996) 4 SCC 659, to contend, that only the material placed on record by the prosecution, could be gone into at the time of framing charges. And if, on the basis of the said material, the commission of the alleged offence was prima facie made out, the charge(s) was/were to be framed. At the stage of framing of charges, it was submitted, that the requirement was not to determine the sufficiency (or otherwise) E F G H

- A of evidence to record a conviction. For this, reliance was placed on *State of M.P. Vs. Mohanlal Soni* (2000) 6 SCC 338, wherein this Court had concluded, that the requirement was a satisfaction, that a prima facie case was made out. On behalf of Madan Lal Kapoor, reliance was also placed on *State of A.P. Vs. Golconda Linga Swamy* (2004) 6 SCC 522, to contend that at this stage, meticulous examination of the evidence was not called for.

18. As against the submission advanced on behalf of Madan Lal Kapoor (the respondent-complainant), the appellants/accused contended, that the Court was justified in considering the material on the record of the case, and on the basis thereof, to arrive at a just and reasonable conclusion. In this behalf, it was averred that the post-mortem report, the report of the Central Forensic Science Laboratory, the inquest proceedings recorded by the SDM, Delhi, and the letters addressed by the family members of the complainant (duly noticed in the inquest proceedings), were a part of the record of the case, and as such, were to be taken into consideration while passing the orders contemplated under Sections 227 and 228 of the Cr.P.C. The submission advanced on behalf of Madan Lal Kapoor (the respondent-complainant) before the High Court, was accepted. The High Court arrived at the conclusion, that the Additional Sessions Judge, Delhi had erroneously placed reliance on the decision rendered by this Court in *Satish Mehra Vs. Delhi Administration* (supra), which had already been overruled by the judgment rendered by a larger Bench in *State of Orissa Vs. Debendra Nath Padhi* (supra).

19. While considering the contention advanced on behalf of the appellants/accused, the High Court concluded, that the material/documents/record which the complainant was placing reliance on, did not fall within the ambit and scope of the term "record of the case" contained in Section 227 of the Cr.P.C. According to the High Court, the record of the case referred to

in Section 227 of the Cr.P.C. was only such record, documents and articles which, on consideration by the Magistrate, are sent to the Court of Sessions, consequent upon passing an order of commitment. The material and documents relied upon by the appellants/accused in the present controversy would, therefore, not fall within the zone of consideration at the hands of the Court of Session under Section 227 of the Cr.P.C. Accordingly, the submissions advanced at the behest of the appellants/accused were declined. For the aforesaid reasons, the High Court accepted the Criminal Revision Petition filed by Madan Lal Kapoor (the respondent-complainant). The order dated 7.8.1999 passed by the Additional Sessions Judge, Delhi was accordingly quashed. The parties were accordingly directed to participate in the further proceedings before the Court of Sessions.

20. We have considered the submissions advanced at the behest of the rival parties. We are of the view, that in the facts and circumstances of this case, the High Court had before it an exhaustive and detailed order passed by the Additional Sessions Judge, Delhi, it ought to, therefore, have examined the controversy, while keeping in mind the inherent power vested in it under Section 482 of the Cr.P.C. specially because the Additional Sessions Judge in his order dated 7.8.1999, had concluded, on the basis of the material relied upon by the accused, that no case was made out against the accused. This according to learned counsel, was permissible in view of the inherent jurisdiction vested in the High Court under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. is being extracted hereunder:-

"482. Saving of inherent power of High Court

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

- A The discretion vested in a High Court under Section 482 of the Cr.P.C. can be exercised suo-moto to prevent the abuse of process of a court, and/or to secure the ends of justice. This Court had an occasion to examine the matter in *State of Orissa Vs. Debendra Nath Padhi*, (supra) (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent-complainant), wherein it was held thus:-

- C "29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhaian Lal's case."

(emphasis is ours)

- E Recently, this Court again had an occasion to examine the ambit and scope of Section 482 of the Cr.P.C. in *Rukmini Narvekar Vs. Vijaya Satardekar & Ors.*, (2008) 14 SCC 1, wherein in the main order it was observed, that the width of the powers of the High Court under Section 482 of the Cr.P.C. and under Article 226 of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed, that under Section 482 of the Cr.P.C., the High Court was free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we
- H examine whether the High Court ought to have exercised its

inherent jurisdiction under Section 482 of the Cr.P.C. in the facts and circumstances of this case. A

21. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held. B
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22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would G
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- A have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section
- B 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained
- C in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the
- D prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the
- E actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.
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23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under
- G Section 482 of the Cr.P.C.:-

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

accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false. A B

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

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? D

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. E F

24. The complaint made by Madan Lal Kapoor (the respondent-complainant) proceeds on the assumption, that his daughter Dr. Monica Thapar was administered poison. The said assumption was based on the fact, that the respondent-complainant, (as also the members of his family), found the body of their daughter had turned blue when they laid their eyes on it for the first time after her death. The motive disclosed in the complaint is non-cordiality of relations between the deceased Dr. Monica Thapar, and the family members of her husband (the appellants herein), on account of non-fulfillment H

- A of dowry demands. Insofar as the allegation, that the appellants had poisoned Dr. Monica Thapar to death is concerned, the appellants have placed reliance on the post-mortem report dated 28.9.1992, chemical analysis findings recorded in the Central Forensic Science Laboratory's report dated 9.2.1993,
- B the inquest report dated 6.7.1993, and the order passed by the Additional Sessions Judge, Delhi, dated 7.8.1999. It is clear, that Madan Lal Kapoor (the respondent-complainant), was associated with the investigative process from the very moment the body of Dr. Monica Thapar arrived at Delhi. It was at his
- C instance, that the post-mortem examination was conducted. The body of the deceased, after the same was subjected to the post-mortem examination, was handed over jointly to Madan Lal Kapoor (the father of the deceased) and to Rajiv Thapar (the husband of the deceased). The cremation of the body of
- D Dr. Monica Thapar was carried out jointly by the two families. A high level Medical Board, constituted for conducting the post-mortem examination, in unequivocal terms returned a finding, that "cardiac decompensation due to enlarged atrial septal defect & pulmonary hypertension" was the cause of Dr. Monica Thapar's death. It would be pertinent to notice, that samples
- E from the stomach, intestine, liver, spleen, kidney and blood of the deceased's body were taken for forensic examination in order to verify the allegation of poisoning levelled by Madan Lal Kapoor. The Central Forensic Science Laboratory, New Delhi, in its report dated 9.2.1993 negated the aforesaid allegation
- F by concluding, that the samples did not indicate the presence of any common poisoning substance. Relying on the inquest report dated 6.7.1993, rendered by the SDM, Delhi, it was sought to be asserted, that echo-cardiography conducted at the Urmil Heart and Lung Centre, Surat, disclosed the presence
- G of a large hole in Dr. Monica Thapar's heart. Even according to the Urmil Heart and Lung Centre, Surat, Dr. Monica Thapar had suffered a massive heart attack, and had died at the said hospital on 26.9.1992. It was the submission of the learned counsel for the appellants, that the aforesaid material is
- H evidence of sterling quality which was sufficient to demonstrate,

that there was not the remotest possibility, that the trial against the appellants would lead to their conviction. A

25. The evidence, relied upon by the appellant has not been contested or refuted by Madan Lal Kapoor (the respondent-complainant), even though he was aware of the same when he filed the complaint. During the course of the proceeding before the committing Magistrate, and even before Sessions Court and the High Court, the appellants had placed emphatic reliance on the material referred to above. The same remained unrefuted in the pleadings filed on behalf of Madan Lal Kapoor. During the course of hearing at the stages referred to above, the veracity of the documents/material referred to above was not contested. The aforesaid position has subsisted even before this Court. It was accordingly submitted on behalf of the appellants, that even if trial is allowed to proceed against the appellants, at the culmination thereof, it would be impossible to return a finding of guilt against any of the accused. B
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26. According to the learned counsel for the appellants, the material in the nature of the post-mortem report, the Central Forensic Science Laboratory's report, as also the inquest report, would be sufficient to exculpate the appellants from the allegations and accusations levelled in the complaint. E

27. We are one with the aforesaid submission. From the documents/material relied upon by the appellants, for exactly the same reasons as have been projected on behalf of the appellants, we are satisfied to conclude, that the death of Dr. Monica Thapar was not caused by poisoning. Merely because her body had turned blue, when it arrived at Delhi, in our view, is not a sufficient basis to infer that she had been poisoned to death. In fact material relied upon by the appellants is sufficient to condemn the factual basis of the accusation as false. F
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28. It also needs to be noticed, that Madan Lal Kapoor (the respondent-complainant) took a summersault before the Additional Sessions Judge, Delhi by alleging, that Dr. Monica H

A Thapar had been strangled by the appellants, (even though
the assertion in the complaint was, that she had been poisoned
to death). To determine the veracity of the allegation of
strangulation, as the cause of her death, the Additional
Sessions Judge, Delhi summoned Dr. L.T. Ramani, Chief
B Medical Officer, Civil Hospital, New Delhi and Dr. Amit
Banerjee, Professor, Cardiothoracic Surgery, G.B. Pant
Hospital, New Delhi (members of the Medical Board which had
conducted the post-mortem examination) to clarify the altered
accusation levelled by Madan Lal Kapoor. The aforesaid
C doctors, as is apparent from the order dated 7.8.1999 passed
by the Additional Sessions Judge, Delhi, opined in the
negative. They affirmed, that the death of Dr. Monica Thapar
had not been caused by strangulation. We are therefore
satisfied to affirm, that the death of Dr. Monica Thapar has not
D been shown to have been caused by strangulation. On an
overall examination of the matter, we have no other option,
specially in the absence of any submission to the contrary, but
to conclude, that the material relied upon by the appellants
would lead to the indubitable conclusion, that Dr. Monica
Thapar had not died on account of having been strangled.

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29. We shall now advert to the allegation made in the
complaint by Madan Lal Kapoor, that there was non-cordiality
of relations between the deceased Dr. Monica Thapar, and her
in-laws. Telephone bills demonstrate, that phone calls were
F regularly made from the residence of Rajiv Thapar (appellant
no. 1), to the maternal family of Dr. Monica Thapar. The family
of the husband of Dr. Monica Thapar was in consistent and
regular contact with the other family members also. This
relationship is shown to have been subsisting even at the time
G of the illness of Dr. Monica Thapar which proved to be fatal.
Of utmost importance is a letter written by Rajiv Kapoor (the
brother of the deceased, and the son of Madan Lal Kapoor,
the respondent-complainant). In a letter dated 22.9.1992, just
four days before the death of Dr. Monica Thapar (on
H 26.9.1992), Rajiv Kapoor showered praise on the immediate

family of Rajiv Thapar residing at Delhi. His letter to his sister describes her in-laws in Delhi, as "very affectionate and very caring". The telephone bills, as also the letter addressed by Rajiv Kapoor to his sister (Dr. Monica Thapar), are materials of sterling quality. Neither of the said materials has been controverted, either on veracity or on truthfulness. All this, in our opinion, would undoubtedly and inevitably result in concluding, that the relationship between the two families was cordial and affectionate. Clearly contrary to what has been alleged in the complaint.

30. Even though the statement of Dr. Pritu Dhalaria has been relied upon by the SDM, Delhi in the inquest report, which completely knocks out all the pleas advanced by Madan Lal Kapoor (the respondent-complainant), we are of the view, that it would be improper to make any reference thereto in deciding the present controversy. Reliance on the statement of Dr. Pritu Dhalaria would be permissible only after the same is recorded by a court on oath, whereupon, he has to be subjected to cross-examination. Only then, his statement would acquire credibility for reliance. Any fact situation based on the oral testimony, by one or the other party, cannot be the basis of a determination, akin to the one in hand.

31. We are persuaded to conclude from the facts and circumstances of the case exhaustively discussed in the foregoing paragraphs, that all the steps delineated in the paragraph 23 above, can be answered in the affirmative, on the basis of the material relied by the accused, more particularly, the post-mortem examination report dated 28.9.1992 conducted by a Medical Board comprising of four doctors, whose integrity has not been questioned by the respondent-complainant; the chemical analysis findings contained in the Central Forensic Science Laboratory's report dated 9.2.1993 which has not been disputed by the respondent-complainant; the inquest report of the SDM, Delhi, dated 6.7.1993, findings whereof have been painstakingly

- A recorded by involving the respondent-complainant; the letter of
Rajiv Kapoor (the brother of the deceased) dated 22.9.1992
addressed to Dr. Monica Thapar just four days before her
death, the contents and authenticity whereof are not subject
matter of challenge at the hands of the respondent-complainant;
B and finally, the telephone bills produced by the appellants-
accused substantiating consistent and regular contact between
the rival families, which have not been questioned. We,
therefore, have no hesitation in concluding, that the judicial
conscience of the High Court ought to have persuaded it, on
C the basis of the material examined by it, to quash the criminal
proceedings initiated against the appellants-accused. We,
therefore, hereby quash the aforesaid proceedings.

32. Despite the conclusion recorded hereinabove, we are
of the view, that in the facts and circumstances of this case,
D there should have been no difficulty whatsoever for the High
Court to have exercised its judicial conscience for invoking the
power vested in it under Section 482 of the Cr.P.C. From the
narration of the facts recorded above, it emerges, that even
though the respondent-complainant Madan Lal Kapoor, in his
E complaint dated 6.7.1993, adopted a clear and categoric
stance, that his daughter Dr. Monica Thapar had been
poisoned to death, before the Additional Sessions Judge, Delhi,
the respondent-complainant ventured to suggest, that the
appellants-accused had strangled her. The Additional
F Sessions Judge, Delhi, summoned two of the doctors who were
members of the Medical Board which had conducted the post-
mortem examination, and sought clarifications from them. He
also recorded the statement of one of the said doctors. The
Additional Sessions Judge, thereupon, ruled out the plea of
G strangulation. When the respondent-complainant himself was
uncertain about the manner in which his daughter had allegedly
died, the High Court should have viewed the matter keeping in
mind the likelihood of the hurt caused to a father who had lost
his daughter within one year of her marriage. The matter
H needed to have been evaluated, on the basis of one of the

parameters laid down in *State of Haryana & Ors. Vs. Bhajan Lal & Ors.*, 1992 Supp. (1) SCC 335, namely, whether the criminal proceedings initiated by Madan Lal Kapoor (the respondent-complainant) were actuated by malice and ulterior motive for wreaking vengeance on the accused with a view to spite him due to some private/personal grudge. There is yet another reason emerging from the facts of the case which needed to be kept in mind. Madan Lal Kapoor (the respondent-complainant) had continued to represent before the SDM, Delhi, that he would produce the mother of the deceased, who knew the facts best of all. Despite that, the mother of the deceased did not appear in the inquest proceedings to record her statement, even though a number of opportunities were afforded to the respondent-complainant to produce her. The permissible inference is that he was himself not privy to the facts. The fact that the mother of the deceased had not appeared to record a statement against the appellants-accused has to have some reason/justification. Would a mother who believes that her daughter had been poisoned/strangled, restrain herself from recording her statement, despite the persuasion of her husband? Probably not. The instant factual position has been recorded hereinabove, not for the sake of determination of the present controversy. In a factual situation not as clear as the one in hand, facts such as these, could be taken into consideration by a High Court for recording its satisfaction, on the parameters formulated above.

33. For the reasons recorded hereinabove, criminal proceedings against the appellants-accused are hereby set aside. The order of the High Court is accordingly also set aside, but on grounds different from those taken into consideration by the High Court. The instant appeal, accordingly succeeds.

B.B.B.

Appeal allowed.