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[MANU/AP/0716/1998](#)

IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD

WP No. 9546 of 1996

Decided On: 27.07.1998

Appellants: T. Venkaeshwarlu and others
Vs.

Respondent: State of A.P. and others

Hon'ble Judge:

S.V. Maruthi, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. S. Srinivasa Reddy, Adv.

For Respondents/Defendant: Public Prosecutor and Mr. V. Pattabhi, Adv.

Subject: Constitution

Subject: Criminal

Catch Words:

Accused, Aggrieved Person, Allowance, Bias, Bigamous Marriage, Bigamy, Citizenship, Cognizable Offence, Commission of the Offence, Conspiracy, Constitution of India, Criminal Conspiracy, Decree of Divorce, Discretionary Power, Dissolution, Final Judgment, FIR, First Information Report, Forgery, Judicial Scrutiny, Jurisdiction, Legal Aid, Maliciously, Mandamus, Moral Turpitude, Non-Cognizable Offence, Offence of Bigamy, Reason to Believe, Remedy, Social Order, The Executive, Vengeance

Acts/Rules/Orders:

Constitution of India - Article 226; Indian Penal Code, 1860 - Sections 120-B, 155(2), 156(1), 161, 468, 471, 482, 494 and 498-A; Civil Procedure Code, 1908 - Section 13; Criminal Procedure Code, 1973 - Sections 173 and 188

Cases Referred:

State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194; Y. Narasimha Rao v. Y. Venkata Laxmi, 1991 (3) SCC 451; M.M. Rajendran v. K. Ramakrishnan, 1997 (6) SCC 85; State of Bihar v. P.P. Sharma, 1992 SUPP. (1) SCC 222; Ramesh Venkat Perumal v. State of Andhra Pradesh, 1988 (1) ALT (Crl.) 1; State of Punjab v. Raj Singh, AIR 1998 SC 768; State of Bihar v. JAC Saldhana, (1980) 1 SCC 554; State of Himachal Pradesh v. Pirthi Chand, (1996) 2 SCC 37

JUDGMENT

1. This Writ Petition is filed for quashing the proceedings in CC No.482 of 1995 before the XXII Metropolitan Magistrate-cum-Mahila Court, Hyderabad (for short 'the Mahila Court').

2. The facts in brief are as follows:

The 1st petitioner married the 2nd respondent on 31-1-1985. At the time of marriage he was working with M/s. Raasi Ceramic Industries, Hyderabad. They have two children born on 25-10-1985 and 5-6-1987. Towards the end of 1986, a Swedish Company selected the 1st petitioner as a Technical Consultant/Ceramic Design Engineer, initially for a period of six months which was extended further in November, 1987. The 2nd respondent joined the 1st petitioner along with her two children, Smt. Anusuya, the elder sister of the 2nd respondent and Sri Narayana, the brother-in-law of the 2nd respondent at the expense of the 1st petitioner. Subsequently differences cropped between the 1st petitioner and the 2nd respondent which led to a decree of divorce granted by the District Court in Nacka, Sweden on 28-3-1994 under the Swedish Marriage Code of Judicial Procedure. On 2-11-1994 the Swedish Court granted the custody of children to the 2nd respondent who also got the family house. The 1st petitioner is paying the maintenance at the rate of Swedish Kamavar 1500 for each child. The 1st petitioner along with his two sons had acquired Swedish Citizenship. The 2nd respondent was granted Permanent Residence Permit on 27-9-1989 as she was not keen on acquiring Swedish Citizenship, The Permanent Residence Permit was being renewed and is valid upto 27-9-1998. While granting the decree for divorce, the final judgment of the Swedish Court stated that the aggrieved party could prefer an appeal before the Swedish High Court before 23-11-1994. However, the 2nd respondent did not prefer any appeal. She accepted the conditions specified in the said judgment. She continues to stay in Sweden enjoying the benefits of the divorced spouse in terms of the Swedish Law as provided by the Swedish Social Office and Social Insurance Office. The petitioner No. 1 got married to the 6th petitioner on 11-5-1995. A certificate of marriage was issued under the Hindu Marriage Act, 1955 by the Marriage Registrar on 20-5-1995 at Nellore, Andhra Pradesh.

3. While so, the 2nd respondent filed CC No. 152 of 1995 on the file of the Mahila Court, making allegations of cruelty, bigamy, forgery and criminal conspiracy under Sections 498(A), 494, 468 and 120-B of the Indian Penal Code (IPC). In the said complaint, the petitioners 1 to 7 are shown as Accused, Aggrieved by the said complaint, the present Writ Petition is filed for quashing the same on various grounds under Article 226 of the Constitution of India.

4. The main argument of the learned Counsel for the petitioners is that the complaint is initiated maliciously at the instance of the 3rd respondent who happens to be the brother-in-law of the 2nd respondent, who is an influential Police Officer, The 2nd respondent though residing at Sweden came to India in 1995 and at the instance of the 3rd respondent initiated the complaint. The Counsel submitted that the FIR does not disclose even a prima facie offence of either bigamy, forgery or cruelty and, therefore, the investigation should not be allowed to proceed as it would amount to harassment of the 1st petitioner. If the complaint filed by the 2nd respondent did not disclose a prima facie offence, it is open to this Hon'ble High Court to interfere under Article 226 of the Constitution of India. In support of his contentions, he relied on *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) SCC 335, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194, *Y. Narasimha Rao v. Y. Venkata Laxmi*, 1991 (3) SCC 451 etc.

5. The learned Counsel for the petitioners further submitted that as regards the offence of bigamy under Section 494 IPC, there was a valid divorce in accordance with law by the District Court at Nacka, Sweden. The divorce was granted on the basis of consent. It is true that the 2nd respondent did not agree for consent at the initial stage. However at a later stage she consented on condition that the custody of the children will be given to her. Accordingly a decree of divorce was passed, The said decree is a valid decree within the meaning of Section 13 CPC and, therefore, it is binding on both the parties and the Courts in India. Against the said judgment though there was a right of appeal, the 2nd respondent did not file any appeal. Having waited for an appeal to be filed and since no appeal was filed within the period prescribed, the 1st petitioner entered into a marriage with the 6th petitioner at Nellore. The decree of divorce granted by the Swedish Court is binding on the Civil Courts. Therefore, the 2nd respondent cannot make an allegation of bigamy

against the 1st petitioner. In view of the above, the facts stated in the complaint does not disclose a prima facie offence of bigamy. Further, the marriage was celebrated at Nellore. Therefore, apart from the fact that the facts do not disclose the prima facie offence of bigamy, the Courts at Hyderabad has no jurisdiction to try the offence under Section 494 IPC as the marriage was celebrated at Neilore.

6. The next offence alleged in the complaint is cruelty under Section 498(A) IPC. The complaint indicates the alleged cruelty by the 1st petitioner at Sweden and Nellore, At no point of time either the petitioner No.1 or the 2nd respondent are the residents of Hyderabad. Further the allegations of cruelty against the 1st petitioner upto. 1992 are in Sweden while the allegations of cruelty in 1993 are alleged to be in Nellore, Therefore, none of the acts of cruelty are committed within the jurisdiction of the Mahila Court at Hyderabad. Therefore, the Mahila Court has no jurisdiction to try the offence as the complaint does not disclose prima facie offence within the jurisdiction of the Mahila Court at Hyderabad.

7. The next offence alleged in the complaint is forgery. The complaint says that:

"A-1 while in India had forged her signatures on an application form and submitted the same to the Branch Manager - State Bank of Hyderabad, Gunfoundry Branch, Hyderabad and also to the Grindlays Bank, Abids, Hyderabad, where she was having a joint account. In this regard, the conduct of A-1 is sheer criminal in nature and he is liable for punishment under Sections 468 and 471 IPC."

In support of this allegation, the 2nd respondent filed a fax message. A perusal of the fax message indicates that it was issued from Sweden on 27-5-1992, Therefore, the alleged offence of forgery has not taken place within the jurisdiction of the Mahila Court at Hyderabad. Consequently, the Mahila Court at Hyderabad has no jurisdiction.

8. The learned Counsel for the petitioners also submitted that the petitioner No.1 obtained Swedish Citizenship and, therefore, the Mahila Court cannot take cognizance of any of these offences without the previous approval of the Central Government under Section 185 of the Criminal Procedure Code, There is no evidence that any attempt is made to obtain the previous approval from the Central Government before the Mahila Court directed the Police to investigate into the offences alleged against the 1st petitioner and, therefore, the Courts in India have no jurisdiction to investigate the offences.

9. In view of the above, the learned Counsel for the petitioners submitted that it is evidently a fit case where the prosecution should be quashed exercising the extraordinary jurisdiction under Article 226 of the Constitution of India.

10. The learned Counsel for the respondents No.3 & 4 vehemently opposed the arguments advanced by the learned Counsel for the petitioners. The learned Government Pleader appearing for the 1st respondent contended that it is too early to the Court to interfere under Article 226 of the Constitution of India. It is not a case that the complaint does not disclose an offence. It is only at the stage of investigation. Section 188 of Cr.PC bars an enquiry or a trial into an offence in a case where the offence is committed by a non-citizen, without the previous approval of the Central Government. There is a distinction between an enquiry and investigation under the Criminal Procedure Code. Section 188 Cr.PC does not bar an investigation into an offence. The Counsel relied on the following judgments in support of his contentions:

(1) R.D. Bajaj's case (supra)

(2) MM Rajendran v. K. Ramakrishnan, 1997 (6) SCC 85

(3) State of Bihar v. P.P. Sharma, 1992 SUPP.(1)SCC222

(4) Ramesh Venkat Perumal v. State of Andhm Pradesh, 1988 (1) ALT (Crl.) 1 and

(5) State of Punjab v. Raj Singh, AIR 1998 SC 768.

While the Counsel for respondents 3 and 4 relying on P.P. Sharma's case (supra) and * the Judgment of the Supreme Court in Khajan Lal 's case (supra) vehemently contended that the 1st petitioner committed fraud on the 2nd respondent and obtained a divorce by means of deceit and subjected her to cruelty. She has no other alternative except to seek justice from the Courts of law. The Counsel further submitted that this Court under Article 226 of Constitution of India should not quash the investigation at the initial stage. It is a matter of evidence whether the offence is committed or not. In view of the Judgments of the Supreme Court laying guidelines for interfering under Article 226 of the Constitution of India, it is evidently a fit case where the Writ Petition should be dismissed.

11. The question, therefore, is whether it is a fit case for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India and quashing the investigation directed by the Mahila Court at Hyderabad into the complaint filed by the 2nd respondent against the 1st petitioner and others.

12. Before referring to the factual position, it is necessary to refer to the guidelines laid down by the Supreme Court in various decisions. In Khajan Lal's case (supra), the Supreme Court has laid down the following guidelines for stalling the investigation by the Police in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India. The relevant guidelines read as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal gaidge."

13. The judgment in Bhajan Lal 's case (supra) was referred to and followed in P.P. Sharma 's case (supra) wherein it was held as follows:

"23..... When the police report under Section 173 Cr.PC has to go through the judicial scrutiny it is not open to the High Court to find fault with the same on the ground that certain documents were not taken into consideration by the Investigating Officer, We do not, therefore, agree with the High Court that the FIR and the investigation is vitiated because of a mala fide on the part of the informant and the Investigating Officer, We may, however, noticed the factual matrix on the basis of which the High Court has reached the findings of mala fide against the informant and the Investigating Officer. The High Court based the findings against the informant R.K. Singh..."

"37. Undoubtedly, the arms of the High Court are long enough, when it exercises its prerogative discretionary power under Article 226 of the Constitution, to reach injustice wherever it is found in the judicial or quasi-judicial process of any Court or Tribunal or authority within its jurisdiction. But it is hedged with self-imposed limitations. When and under what circumstances would a High Court be justified to quash the charge-sheet even before cognizance of the offence was taken by the criminal Court is the crucial question, in particular on mala fides of the complainant or investigating officer and on merits."

"41.... The primary duty of the police, thus is to collect and sift the evidence of the commission of the offence to find whether the accused committed the offence or has reason to believe to have committed the offence and the evidence available is-sufficient to prove the offence and to submit his report to the competent Magistrate to take cognizance of the offence."

"42.... The Code gives to the police unfettered power to investigate all cases where they suspect a cognizable offence has been committed. In an appropriate case an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution, If the Court could be convinced that the power of investigation has been exercised by a police officer mala fide, a mandamus can be issued restraining the investigator to misuse his legal powers. The same view was reiterated in State of Bihar v. JAC Saldhana, (1980) 1 SCC 554, wherein this Court held mat unless extra-ordinary cases of gross abuse of power by those in charge of the investigation is made out, the Court should be quite loath to interfere at the stage of investigation. A field of activity is reserved for police and the executive. This Court also noted that it is a clear case of usurpation of jurisdiction by the High Court, that vested in the Magistrate to take or not to take cognizance of the case on the material placed before him. The High Court committed grave error by making observations on seriously disputed questions of facts taking its cue from affidavit, which in such a situation hardly provides any reliable material. This Court also noted that the interference or direction, virtually amounts to a mandamus to close the case before the investigation is complete."

"57.... The allegation of mala fide and bias are more often made easily, than proved. Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism."

14. In R.D. Bajaj's case (supra) also the Supreme Court reiterated the guidelines laid down in Bhajan Lal's case (supra).

15. In M.M. Rajendran 's case (supra), the Supreme Court remitted the matter to the High Court for examining whether the complainant ex Jade make out any offence and whether the ingredients of the offence alleged against the accused are satisfied. The High Court was also directed to examine the question of limitation and sanction for' prosecution raised by the complainant as it was not considered by the High Court.

16. In State of Himachal Pradesh v. Pirlhi Chand, (1996) 2 SCC 37 the Supreme Court held as follows:

"12..... the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/ Charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet."

"13....When the Court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.....When the Legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk."

17. From the various decisions referred to above, what emerges is that in rarest of rare cases the extraordinary jurisdiction and power under Article 226 of the Constitution of India should be invoked and exercised. It is only in cases where the facts mentioned in the complaint or FIR do not disclose ex facie a cognizable offence or an offence; where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused; and, where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the power under Article 226 of the Constitution of India can be exercised to quash the investigation. The power under Article 226 of the Constitution of India is hedged with self-imposed limitations to quash a charge-sheet or an investigation even for cognizance of the offence taken by the Criminal Court. The Police has the unfettered power to investigate all cases where they suspect a cognizable offence. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. Greater circumspection, care and caution should be borne in mind by the High Court when it exercises its inherent power under Article 226 of the Constitution to scuttle an investigation at its inception.

18. Let us examine the facts of the present case in the light of the above principles. The FIR is dated 29-7-1995. The occurrence of offence according to the FIR is from 1993 and 11-5-1995 and

continuing. The FIR is registered under Sections 498-A, 494, 468 and 120-BIPC. Let us now examine each offence registered under the FIR.

19. Section 498A relates to an offence of cruelty to the wife. It is not necessary to extract the Section in the context of the present case. The allegations of cruelty made in paragraphs 5 to 16 of the complaint deal with the acts of cruelty meted out to the 2nd respondent by the 1st petitioner in 1991-92 at Sweden. The 2nd respondent complains that there was a change in the attitude of the 1st petitioner as she belongs to Telangana and the 1st petitioner used to beat her and insult her and humiliate her. Paragraphs 17 and 18 deal with the cruelty meted out by the 1st petitioner to the 2nd respondent in 1993 at Nellore. A reading of paragraphs 5 to 18 of the complaint makes it clear that the alleged acts of cruelty were either in Sweden or in Nellore. None of the alleged acts of cruelty took place within the jurisdiction of Manila Court at Hyderabad. Therefore, the Courts at Hyderabad or the Police in Hyderabad cannot register FIR and investigate into the allegations made in the complaint, even assuming that the allegations made in the above paragraphs viz., 5 to 18 of the Complaint amount to acts of cruelty.

20. The next offence alleged in the FIR is under Section 494 IPC which relates to the offence of bigamy. The question of bigamy arises if a person marries again while the first marriage is still subsisting and the 1st wife is living. If the first marriage of the 1st petitioner with the 2nd respondent is subsisting, then the 1st petitioner has committed an offence of bigamy falling under Section 494 IPC. Even then the next question that arises for consideration is whether the offence of bigamy is committed within the jurisdiction of the Mahila Court at Hyderabad and whether the Police at Hyderabad can register FIR and investigate after taking cognizance of the offence. The undisputed fact is there was a divorce and a decree of divorce was passed by the District Court of Nacka at Sweden. The 2nd respondent says in the complaint that the 1st petitioner forged his signature and managed to get the decree of divorce from the Court. At this stage it is necessary to refer to the decree of divorce granted by the Swiss Court. It says "Defendant - Indira Tirunagaru - Solicitor and assistance according to legal aid: Bachelor of Law Abdel-Hay Alami." The gist of the decree reads as follows:

".... Venkateshwarlu Tirunagaru applied to the district Court for dissolution of marriage. Indira Tirunagaru opposed the claim. Both of them together have children under 16 years of age, so therefore they were granted time for consideration. After the time for consideration Venkateshwarlu Tirunagaru claimed for the verdict on dissolution of the marriage to be informed. Indira Tirunagaru consented the claim on divorce and claimed that the District Court should grant her the custody of their children, Santosh and Sanjeev, and that the District Court should under an obligation the Venkateshwarlu Tirunagaru shall pay an up keep allowance at 2500 kr for each child and that the District Court should grant her the right to stay in the apartment unless and until the joint property of the husband and wife is divided."

It further says:

"Latest by the 23 November 1994 a written appeal should be sent to the District Court. It should be addressed to Seva Court of appeal..."

From a reading of the judgment of the Swiss Court, it is clear that the 2nd respondent did not give her consent at the first instance, but later she consented on the divorce, perhaps for the reason that the custody of the children were given to her. One admitted fact is that the 2nd respondent did not prefer any appeal against the said Judgment. If she is really aggrieved by the Judgment, her remedy is by way of an appeal. As already referred to above, the allegations made in the complaint are contrary and inconsistent with the facts stated in the decree of divorce granted by the District Court, Nacka at Sweden. The 2nd respondent did not choose to appear in spite of notice and defend her case in this Court. It is not her case that the decree of the Swiss Court is not binding on the Courts in India. On the other hand, under Section 13 of the CPC the Judgment of

the Foreign Court is binding on the Courts in India except under certain circumstances. The averments made in the complaint prima facie appear to be false. Therefore, it cannot be said that there is no divorce between the 1st petitioner and the 2nd respondent, especially in a case where the 2nd respondent has not preferred any appeal which fact is admitted in the counter affidavit filed by the 3rd and 4th respondents though the 2nd respondent did not choose to file any counter affidavit denying the averments made by the 1st petitioner in the affidavit. Since there is no counter to the affidavit filed by the petitioner stating that there is no divorce between the 1st petitioner and the 2nd respondent by a valid decree of divorce by the Swiss Court, the fact that there is a divorce between them is admitted. When once the divorce is admitted between the 1st petitioner and the 2nd respondent, after the expiry of the period for preferring an appeal, the 1st petitioner is entitled to marry and, therefore, it cannot be said that the 2nd marriage of the 1st petitioner with the 6th petitioner amounts to a bigamous marriage attracting Section 494 IPC. Further, even assuming that it amounts to bigamous marriage, the marriage was performed at Nellore. Therefore, the Manila Court at Hyderabad has no jurisdiction and the Police in Hyderabad are not competent to investigate into the alleged offence of bigamy not only on the ground of jurisdiction, but also on account of absence of prima facie case.

21. The next offence alleged is Section 468 IPC which relates to forgery. The allegations in support of this offence read as follows:

"The complainant further submits that she also has come to find that A1 while in India had forged her signatures on an application form and submitted the same to the Branch Manager-State Bank of Hyderabad, Gunfoundry branch, Hyderabad, and also to the Grindlays Bank, Abids, Hyderabad, where she was having a joint account. In this regard, the conduct of A1 is sheer criminal in nature and he is liable for punishment under Sections 468 and 471 IPC."

In support of the above allegation in the complaint, the 2nd respondent enclosed a fax message dated 27-5-1992 sent from Sweden to the State Bank of Hyderabad, NRI Cell, A reading of the fax message shows that the fax message was issued from Sweden and three years have elapsed from the date of the fax viz., 29-7-1992 to the date of the complaint viz., 29-7-1995. Further she did not choose to dispute her signature immediately in 1992. It is only after the divorce proceedings and in the complaint for the first time she made this allegation evidently to take revenge against the 1st petitioner. Therefore, it is not only barred by limitation but since it emanates from Sweden, the Mahila Court at Hyderabad cannot direct the Police to investigate into this offence as the offence has not been committed within its jurisdiction and the Police do not get the jurisdiction to investigate into the offence.

22. From the above it follows that all the three offences alleged against the 1st petitioner are not committed within the jurisdiction of the Mahila Court at Hyderabad and consequently the Mahila Court at Hyderabad has no jurisdiction to direct the Police to investigate into the said offences. It also follows from the above that the facts disclosed in the complaint ex facie do not establish any of the offences registered under the FIR. One of the guidelines laid down by the Supreme Court in the Bhajan Lal's case (supra) is if the facts do not disclose ex facie a cognizable offence this Court can interfere under Article 226 of the Constitution of India and stall the investigation. Applying the above principle, it is a fit case where a direction should be issued restraining the Police authorities from proceeding with the investigation.

23. Further, though notice was issued to the 2nd respondent, she has not chosen to appear either in person or through an Advocate. On the other hand, her brother-in-law and sister viz., respondents 3 and 4 appeared through an Advocate and filed a counter affidavit. The 2nd respondent did not choose to file a counter affidavit. The fact that she did not file any appeal against the judgment/decreed of divorce of the Swiss Court is admitted in the counter affidavit filed by the 3rd and 4th respondents. In the affidavit filed by the 1st petitioner it is stated that the 3rd and 4th respondents accompanied the 2nd respondent to Sweden on the first occasion and the 1st

petitioner got the son of the 3rd and 4th respondents educated. The above admitted facts indicate that the complaint is filed not at the instance of the 2nd respondent, but at the instance of the 4th respondent. At any rate, it indicates that the complaint is filed at the instance of 3rd and 4th respondents and that the 2nd respondent is not very serious in prosecuting the matter. The above facts establish that the complaint filed is not bonafide.

24. In the light of the view which I have expressed, it is not necessary to consider whether the complaint is validly registered without obtaining the consent of the Central Government under Section 188 Cr.PC.

25. In view of the above, the Writ Petition is allowed and the proceedings in CC No.482 of 1995 before the XXII Metropolitan Magistrate-cum-Mahila Court, Hyderabad, are quashed. No costs.

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