IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 1162 of 2022
Reserved on: 23.07.2024
Date of Decision: 08.08.2024

[redacted]

....Petitioner

Versus

State of H.P and Anr.

....Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? Yes

For the Petitioner	:	**Mr M.A. Khan, Sr. Advocate, with Ms Hem Kanta Kaushal and Mr Azmat Hayat Khan, Advocates.**
For Respondent No.1	:	**Ms. Ayushi Negi, Deputy Advocate General.**
For Respondent No.2	:	**Mr Imran Khan and Mr Ketan Singh, Advocates.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing the FIR No.23 of 2022, dated 06.05.2022, registered for the commission of an offence punishable under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (in short 'the Act') at Police Station Dhanotu, District Mandi, H.P.

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2. Briefly stated, the facts giving rise to the present petition are that the informant [redacted] filed an FIR before the police stating that his daughter [redacted] (the victim) was married to [redacted] (petitioner) on 12.12.2020. The petitioner was informed that the victim has to undergo training as an Ayurvedic Doctor. The petitioner expressed his consent for the same. The petitioner demanded the dowry, which was provided. The petitioner and his father started harassing the victim for bringing more dowry. She tried to adjust in her matrimonial home but she was harassed mentally and physically. She suffered the harassment with the hope that the situation would improve but the situation did not improve. She got admission to the MD Course at Navi Mumbai. The petitioner and his family members became aggressive and threatened her. The petitioner threatened to divorce her. He sent a written divorce on 25.04.2022 by levelling false and baseless allegations. The divorce sent by the petitioner is a violation of Section 3 of the Act; hence, it was prayed that an action be taken against the petitioner.

3. The police registered the FIR and conducted the investigation. The police got the statement of the victim recorded under Section 164 of Cr.P.C., who disclosed that the petitioner had divorced her by pronouncing Triple Talaq on 13.01.2022. Hence, the police filed a charge sheet before the Court.

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4. Being aggrieved from the registration of the FIR, the petitioner has filed the present petition for quashing it. It has been asserted that the victim left her matrimonial home on 14.01.2022 without informing the petitioner and his family members. The petitioner tried to contact her but she did not respond. He even sent text messages to her phone but received no response. The petitioner was left with no other option but to send the first communication of Talaq by pronouncing the word Talaq as per Talaq-e-Hasan. After receiving the communication, the informant filed a false complaint at the police station. A false FIR was registered against the petitioner. The first notice of Talaq is not instantaneous but is revocable. The second notice of Talaq was issued on 25.05.2022, which is again revocable. The third pronouncement of Talaq was sent along with the cheque of ₹15,000/- as maintenance for the iddat period. This form of Talaq is approved by Prophet Mohammad and is valid according to all schools of Muslim Law. This Talaq has not been made illegal under the Act. The FIR was wrongly registered. The continuation of the proceedings is an abuse of the process of the law; therefore, it was prayed that the present petition be allowed and the FIR be quashed.

5. The State filed a reply reproducing the contents of the FIR. It was asserted that the Police collected the photocopies of Nikkahnama and the notice of divorce. The victim made a statement

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under Sections 161 and 164 of Cr.P.C., in which she stated that the petitioner called her into the room and gave her instant divorce by pronouncing Talaq thrice on 13.1.2022. Thereafter, the informant told the victim that the petitioner had issued the first notice of Talaq in April 2022. The police found after investigation that the petitioner had committed the offence punishable under Section 4 of the Act. The charge sheet has been filed and is pending before the Court. The petitioner had informed her neighbour-Smt. [redacted] about the Triple Talaq, who affirmed it in her statement. There was sufficient material to file the charge sheet and the Competent Court was seized of the matter; therefore, it was prayed that the present petition be dismissed.

6. A separate reply was filed on behalf of respondent No.2 taking preliminary objections regarding lack of *locus standi*, the petition being an abuse of the process of the Court. It was asserted that the petitioner pronounced Triple Talaq on 13.01.2022 and turned the victim out of her matrimonial home. Allowing the petition will convey a wrong message to society. The informant had spent a huge amount of money on the marriage of his daughter. The victim resided in her matrimonial home. She was harassed for dowry. She had told the petitioner and his family members about her intention to complete an MD in Ayurvedic Medicine. The petitioner and his family

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members had consented to the same; however, they failed to honour the consent given by them and started harassing the victim. They even prevented the victim from attending the coaching. They used to insult the victim and her family members. They did not pay any money to the victim for her maintenance. The notice was sent wrongly as the petitioner had divorced the victim on 13.01.2022. The petitioner intends to solemnize the second marriage. The victim is ready and willing to join the company of the petitioner in her matrimonial home. The sending of the notice after the pronouncement of Triple Talaq is invalid. The Competent Court is seized of the matter; therefore, it was prayed that the present petition be dismissed.

7. A separate rejoinder denying the contents of the replies filed by respondents No.1 and 2 and affirming those of the petition were filed.

8. I have heard Mr M.A. Khan, learned Senior Counsel assisted by Ms Hem Kanta Kaushal and Mr Azmat Hayat Khan, learned counsel for the petitioner, Ms Ayushi Negi, learned Deputy Advocate General for respondent No.1 and Mr Imran Khan & Mr Ketan Singh, learned counsel for respondent No.2.

9. Mr M.A. Khan, learned Senior Counsel for the petitioner submitted that as per the FIR, the petitioner had sent a notice to his

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wife, which is valid under the Act. The Act only applies to Triple Talaq, which is called Talaq-e-Biddat and not to other forms of divorce. The petitioner had divorced his wife in an approved form of divorce called as Talaq-e-Hasan, which is recognized under the Mohamedan Law and has not been made illegal by the Act. He relied upon the judgments of the Kerela High Court in ***Saheer v. State of Kerala, 2023 SCC OnLine Ker 9681*** in support of his submission.

10. Ms. Ayushi Negi, learned Deputy Advocate General for respondent No.1/State submitted that the victim had made a statement under Section 164 of Cr.P.C. before the learned Magistrate that the petitioner had divorced her by pronouncing Triple Talaq on 13.01.2022. The same falls within the prohibition of Section 4 of the Act and the challan was rightly filed against the petitioner. This Court is not to see the truthfulness or otherwise of the allegations made in the petition or the reply and this matter should be left to the learned Trial Court for adjudication; hence, she prayed that the present petition be dismissed.

11. Mr. Imran Khan, learned counsel for respondent No.2 adopted the submissions made by Ms. Ayushi Negi, learned Deputy Advocate General and further submitted that a notice was sent by the petitioner to cover up the pronouncement of Triple Talaq on 13.01.2022. Whether such a Talaq was pronounced or not is to be seen

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by the Competent Court and not during these proceedings. He relied upon the judgment of the Hon'ble Supreme Court in ***Mahmood Ali and Ors versus State of U.P and Ors., 2023 INSC 684*** in support of his submission.

12. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

13. The law regarding the exercise of jurisdiction under Section 482 of Cr.P.C. was considered by the Hon'ble Supreme Court in ***A.M. Mohan v. State [2024] 3 S.C.R. 722 : 2024 INSC 233:2024 SCC OnLine SC 339,*** wherein it was observed:-

> **9.** The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of ***Indian Oil Corporation* v. *NEPC India Limited (2006) 6 SCC 736: 2006 INSC 452*** after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
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> > "**12.** The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P)***

Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19] and ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283].*** The principles, relevant to our purpose are:

> (*i*) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.
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> (*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
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> (*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.
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> (*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence.

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> (*v.*) A given set of facts may make out : (*a*) purely a civil wrong; (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

14. Similar is the judgment in ***Maneesha Yadav v. State of U.P.*** ***2024 INSC 322 2024: SCC OnLine SC 643***, wherein it was held: -

> **12.** We may gainfully refer to the following observations of this Court in the case of ***State of Haryana v. Bhajan Lal1992 Supp (1) SCC 335: 1990 INSC 363***:
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> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (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 grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection

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> and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. The present petition has to be considered as per the parameters laid down by the Hon'ble Supreme Court.

16. The FIR mentions that on 25.04.2022, a written Talaq was sent by the petitioner by levelling false and baseless allegations against the victim. A copy of this Talaqnama was enclosed in the application, which is a violation of Section 3 of the Act.

17. Section 2(c) of the Act defines the "Talaq" means Talaq-e-Biddat or any other similar form of Talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

18. Section 3 of the Act provides that any pronouncement of Talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or any other manner whatsoever, shall be void and illegal.

19. Mulla Principles of Mahomedan Law 22nd Edition 2019 reads in para 311 that Talaq may be pronounced in any of the following ways:

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1. Talaq Ahasan: which consists of a single pronouncement of divorce made during a Tuhr.
2. Talaq-e-Hasan; which consists of three pronouncements made during successive Tuhrs.
3. Talaq-ul-Biddat; three pronouncements made during a single Tuhr either in one sentence or a single pronouncement made during a Tuhr indicating an intention irrevocably to dissolve the marriage.

20. Para 312 provides that the Talaq becomes irrevocable in Ahasan mode on the expiration of the period of Iddat, in Hasan mode on the third pronouncement irrespective of Iddat and in Biddat mode immediately after it is pronounced irrespective of the Iddat. Therefore, the Mohamedan law does not provide a single mode of Talaq but multiple modes and out of these modes, the legislature has only prohibited Talaq-e-Biddat or any other similar form of Talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

21. In the present case, the FIR refers to the notice dated 25.04.2022 (Annexure P-2). It reads that the petitioner conveyed the first communication of Talaq as required by law by pronouncing the word ‘Talaq’. It nowhere mentions that the Talaq had become irrevocable or it had the effect of instantaneous divorce.

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22. The Kerala High Court held in ***Saheer*** (Supra) that the practice of instant Triple Talaq is void and unconstitutional. Only the Talaq-e-Biddat or any other similar form of Talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband has been made punishable but the pronouncement of Talaq-e-Sunat either by Hasan or Ahsan form has not been made illegal. It was observed:

> "**7.** The distinction between talaq-e-biddat and talaq-e-Sunnat, which is classified into ahsan and hasan, has been elaborately considered by this Court in ***Jahfer Sadiq E.A v. Marwa [2022 (5) KHC 50]***. The relevant paragraphs of the judgment are extracted hereunder:
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> > ***"Classification of talaq***
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> > 12. Various authorities including Faizee and Ameer Ali classify talaq into two forms (1) talaq-e-sunnat and (2) talaq-e-bidat. Talaq-e-Sunnat is further classified into "Ahsan" and "Hasan" forms. Tahir Mahmood opines that these classifications are not "modes" or "forms" of talaq, those expressions only refer to the conduct of the man in pronouncing talaq i.e., whether he has or has not followed the prescribed rules for it which aim at dissuading and keeping him away from actually breaking the marriage.
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> > 13. As noted already, the Muslim law prescribes a simple procedure for talaq keeping all chances of reconciliation and reconsideration open. A talaq strictly following this procedure is talaq-e-sunnat-a proper talaq. A talaq in violation of the prescribed procedure is talaq-e-bidat-an improper talaq. Talaq-e-Sunnat is further classified into two based on degrees of virtue in respect of the man's conduct - talaq-e-ahsan and talaq-e-hasan.
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> > 14. In talaq-e-Ahsan, the husband repudiates his wife by a single pronouncement in a period of tuhr during which he has not had intercourse with her and then leaves her to the

observances of iddat. The divorce remains revocable during iddat. If the couple resumes cohabitation or intimacy within the period of iddat, the pronouncement of divorce is treated as having been revoked. Therefore, talaq-e-ahsan is revocable. Conversely, if there is no resumption of cohabitation or intimacy during the period of iddat, then the divorce becomes final and irrevocable, after the expiry of the iddat period. In case of marriage not yet consummated, ahsan talaq may be pronounced during menstruation also. Where the wife and husband are living separately from each other or where the wife is beyond the age of menstruation (old age), the condition of tuhr is not applicable. Talak-eahsan is based on the following verse of the Quran:

> "And the divorced woman should keep themselves in waiting for three courses."

15. Hedya brands talaq-e-ahsan as the most laudable divorce. According to Hedya, this method of divorce is the most approved because of the compassion of the Prophet and secondly, it remains within the power of the husband to revoke the divorce during iddat.

16. Talaq-e-hasan is also an approved form of divorce, which consists of three pronouncements made during three tuhrs with no intercourse taking place during any of these intervals. After the first talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. The same procedure is mandated to be followed, after the expiry of the first month (during which marital ties have not been resumed). After the second pronouncement of talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. Not more than two talaqs can be pronounced within the period of iddat. Quran says:

> "Divorce is only permissible twice, after that, the parties should either hold together on equitable terms or separate with kindness".

If the parties are unable to unite during the period of iddat, the final irrevocable talaq can be pronounced, but only after the period of iddat. When the final talaq is pronounced, it

becomes irrevocable and the marriage comes to an end. In this regard, the Quran says:

> "So, if he (the husband) divorces her (third time) she shall not be lawful to him afterwards until she marries another person".

17. The hasan form is one in which the Prophet tried to put an end to a barbarous pre-Islamic practice. The practice was to divorce a wife and takes her back several times in order to ill-treat her. The prophet, by the rule of the irrevocability of the third pronouncement, indicated clearly that such a practice would not be continued indefinitely. Thus, if a husband really wished to take the wife back, he should do so; if not, the third pronouncement, after two reconciliations, would operate as a final bar. These rules of law follow the spirit of the Quranic injunction.

> "Then when they have reached their term, take them back in kindness or part from them in kindness".

18. The distinction between talaq-e-ahsan and talaqe-hasan is that, in the former, there is a single pronouncement of talaq followed by abstinence during the period of iddat, whereas, in the latter, there are three pronouncements of talaq, interspersed with abstinence. In both these forms, there is a chance for the party to be reconciled by the intervention of friends or otherwise. They are, therefore "approved" forms and are recognized by Muslim law. The Division Bench of this court recently in ***Sajani A. v. Dr. Kalam Pasha [2021 (5) KHC 582]*** held that talaq-e-ahsan and talaq-e-hasan are the valid forms of talaq recognised in Muslim Law.

19. There is yet another mode. When the husband pronounces three formulas at one time, whether the wife is in a state of tuhr or not, the separation takes place instantaneously. This is called talaq-e-bidat, more popularly known as triple talaq in India - e.g., if a man declares talaq using the expression in one sentence - "I divorce thee thrice", - or in separate sentences e.g., "I divorce thee, I divorce thee, I divorce thee". The triple talaq in one utterance resulting in divorce once and for all proceeds from the own will of the husband without there being any attempt

to reconcile marital discord during the prescribed period in the Quran. It is totally antithetical to the spirit of the Quran. Quran nowhere approves of triple talaq in one utterance."

8. The Constitution Bench of the Supreme Court in ***Shayara Bano v. Union of India (2017 KHC 6574)*** declared the observance and practice of instant triple talaq void and unconstitutional. The judgment gave a boost to liberate Indian Muslim Women from the age-old practice of capricious and whimsical methods of divorce by Muslim men, leaving no room for reconciliation. The judgment in *Shayara Bano* vindicated the position that talaq-e-biddat is against the constitutional morality, dignity of women and principles of gender equality and also against the gender equity guaranteed under the Constitution. Consequent to the judgment of the Supreme Court, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted declaring the practice of triple talaq as void and illegal and made an offence punishable with imprisonment of three years and a fine.

9. Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 read thus:

"3. ***Talaq to be void and illegal***.- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. ***Punishment for pronouncing talaq***.-Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."

10. Talaq that has been made punishable under the Act means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband [See Section 2(c) of the Act].

11. The pronouncement of talaq-e-sunnat either by Ahsan form or Hasan form has not been made penal in the Muslim Women (Protection of Rights on Marriage) Act, 2019. Talaq-e-hasan or talaq-e-ahsan are legal and valid under the Muslim Personal Law.

> **12.** In the present case, in Annexure H 'third talaq kuri' the petitioner has narrated the grounds for pronouncing talaq. He has explained the reasons for pronouncing talaq in Annexures B, E and H talaq kuries. The petitioner has specifically stated in Annexures B, E and H that respondent No. 3 is not cooperating with him for a peaceful family life. It is alleged that she has made unfounded accusations of unchastity against him. The petitioner has further stated in Annexures B, E and H that respondent No. 3 has not cooperated for reconciliation. The copies of the talaq kuries would show that several mediations took place. It is further revealed that respondent No. 3 did not cooperate for a Court Centred Mediation also. Respondent No. 3 filed a complaint before the Alappuzha South Police Station alleging offence under Section 498-A read with Section 34 of IPC against the petitioner and his age-old parents making false allegations. The materials placed before the Court would reveal that a series of mediations to reconcile the disputes between the parties failed. There are no indications that the talaq pronounced by the petitioner was instantaneous or irrevocable."

23. In the present case, the letter written by the petitioner, which is the subject matter of the FIR *prima facie* does not fall within the definition of Talaq-e-Biddat and is not punishable under Section 3 of the Act.

24. The victim made a statement during the investigation on oath under Section 164 of Cr.P.C. that the petitioner had divorced her on 13.01.2022 by pronouncing Triple Talaq. It was submitted that this statement is incorrect as no such statement was made while recording the FIR. This submission will not help the petitioner. The truthfulness or otherwise of the investigation is not to be seen at this stage. It was laid down by the Hon'ble Supreme Court in ***Priyanka Jaiswal vs. State of***

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Jharkhand, 2024 INSC 357: 2024 SCC OnLine SC 685 that the Court exercises extra-ordinary jurisdiction under Section 482 of Cr.P.C. and cannot conduct a mini-trial or enter into an appreciation of evidence of a particular case. It was observed:-

> "**13.** We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of *Akhil Sharda 2022 SCC OnLine SC 820* held to the following effect:
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> > "**28.** Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

25. A similar view was taken in ***Maneesha Yadav v. State of U.P., 2024 INSC 322 2024: SCC OnLine SC 643*** wherein it was held that: -

> "**13.** As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the

reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of ***Bhajan Lal (supra)***.

14. We may gainfully refer to the observations of this Court in the case of ***Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home(2019) 11 SCC 706: 2018 INSC 1060***:

> "**14.** First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in ***Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23]***. In ***Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23],*** this Court while deciding the question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16)
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> > "*16.* Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [***Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365***] could have still examined whether the offences alleged to have been committed by the appellant were

> prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

26. This Court cannot say anything about the truthfulness of the statement and it is a matter of trial to be determined by the learned Trial Court.

27. The status report shows that a charge sheet has been filed before the Court, therefore, the Competent Court is seized of the matter. It was laid down by the Hon'ble Supreme Court in ***Iqbal v. State of U.P.***, ***(2023) 8 SCC 734: 2023 SCC OnLine SC 949*** that when the charge sheet has been filed, learned Trial Court should be left to appreciate the same. It was observed:

> "At the same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence particularly in the absence of any specific date, time, etc. of the alleged offences, we are of the view that the appellants should prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any discharge case is made out or not."

28. Thus, this Court should not exercise extraordinary jurisdiction when the learned Trial Court is seized of the matter.

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29. Therefore, it is not possible to quash the FIR in the exercise of the extraordinary jurisdiction of this Court.

30. Consequently, the present petition fails and the same is dismissed.

31. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

8th August, 2024
(Saurav pathania)