

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 1675 OF 2021

C/W

WRIT PETITION No. 2673 OF 2022 (GM-RES)

IN CRIMINAL PETITION No. 1675 OF 2021

BETWEEN:

VIKRAM VINCENT
S/O LATE A.M. JOHN VINCENT
AGED 38 YEARS,
R/AT NO. 6, 13TH CROSS
RESIDENTS ASSOCIATION ROAD,
EJIPURA
BENGALURU – 560 047.

... PETITIONER

(BY SMT. PRATHIMA S.K., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY VIVEKNAGAR POLICE STATION
BENGALURU.
2. RICHA MISHRA
D/O SURENDRANATH MISHRA
AGED ABOUT 36 YEARS,
PERMANENTLY RESIDING AT
NO. A17, GULMOHAR VATIKA

MAHAVIR NAGAR,
RAIPUR
CHATTISGARH – 492 001.

... RESPONDENTS

BY SMT.K.P.YASHODHA, HCGP FOR R1
SRI S.GURU PRASANNA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET FILED BY THE 1ST RESPONDENT AGAINST THE PETITIONER IN C.C.NO.57405/2019 PENDING BEFORE THE XXIX ADDL.C.M.M., BENGALURU FOR THE OFFENCE P/U/S 498A OF IPC PRODUCED AS ANNEXURE-A.

IN WRIT PETITION No.2678 OF 2022

BETWEEN:

SMT.RICHA MISHRA
AGED ABOUT 35 YEARS
D/O SURENDRANATH MISHRA
R/AT NO.A-17
GULMOHAR VATIKA
MAHAVIR NAGAR
RAIPUR
CHATTISGARH – 492 001.

PRESENTLY AT #7421,
FRANKFURD ROAD
DALLAS TX – 75252 (USA)

(BY SRI S.GURU PRASANNA, ADVOCATE)

... PETITIONER

AND:

1. THE COMMISSIONER OF POLICE
NO.2, ALI ASKAR ROAD
VASANTH NAGAR
BENGALURU – 560 051.

2. THE INSPECTOR OF POLICE
VIVEKANAGARA POLICE STATION
BENGALURU – 560 047.
3. THE DIRECTOR
STATE FORENSIC SCIENCE LAB
MADIVALA
BENGALURU – 560 068.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1 AND R2;
NOTICE TO R3 DISPENSED WITH VIDE ORDER DATED
25.02.2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO ISSUE WRIT OF MANDAMUS THE COMMISSIONER OF POLICE, BANGALORE CITY TO ISSUE INSTRUCTIONS TO CYBER-CRIME POLICE STATION BANGALORE TO CONTINUE THE FURTHER INVESTIGATION U/S 173(8) CR.PC AND TO SUBMIT SUPPLEMENTARY CHARGE-SHEET IN RESPECT OF OFFENCES U/S 377 IPC AND S.66 E AND 67 OF IT ACT WITHIN STIPULATED PERIOD OF TIME. THE SUPPLEMENTARY CHARGE-SHEET HAS TO BE SUBMITTED IN CRIME NO.89/17 WHICH IS REGISTERED IN C.C. 57405/19 ON THE FILE OF 29TH ACMM COURT, BANGALORE IN ADDITION TO THE CHARGE SHEET FILED ON 26.09.2019 ANNEXURE-A.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in Writ Petition No.2678 of 2022 seeks the following prayer:

“(A) *Issue writ of mandamus to Commissioner of Police, Bangalore City to issue instructions to cyber-crime Police*

Station Bangalore to continue the further investigation under Section 173(8) of the Cr.P.C. and to submit supplementary charge sheet in respect of offences under Section 377 IPC and Sections 66E and 67 of the IT Act within stipulated period of time. The supplementary charge sheet has to be submitted in Crime No.89 of 2017 which is registered in C.C.No.57405 of 2019 on the file of the 29th ACCM Court Bangalore in addition to the charge sheet filed on 26-09-2019 (Annexure-A).

(B) Grant such other reliefs which this Hon'ble Court may deem fit in the interest of justice and equity."

2. The companion petition in Criminal Petition No.1675 of 2021 is preferred by the petitioner therein who is the husband of the petitioner in Writ Petition No.2678 of 2022.

3. Since both the petitions arise out of a similar issue, as the writ petition is filed by the wife seeking further investigation and the husband seeking quashment of proceedings on filing of the charge sheet, they are taken up together and disposed of by this common order.

4. For the sake of convenience, the petitioner in Criminal Petition No.1675 of 2021 would be referred to as the 'husband' in the course of this order. The pleadings in Writ Petition

No.2678 of 2022, which are common to both the petitions except the prayers, will be noticed in this order.

5. Brief facts leading to the seeking of the aforesaid prayer in Writ Petition No.2678 of 2022 are as follows:-

The petitioner/wife in the year 2013 was selected to pursue her PhD in the Indian Institute of Technology, Mumbai at which point in time the petitioner gets acquainted with Mr. Vikram Vincent who was also pursuing his PhD at IIT, Mumbai. Conversation between the two takes place for long years through the social media and ultimately, they fell in love and got married on 10-06-2015 at Bangalore. It is the case of the petitioner that right from the beginning of marriage the behaviour of Mr. Vikram Vincent, her husband was torturous for having anal sex/unnatural sex. It is contended that for the purpose of performance of such unnatural acts the husband used to abuse, assault and torture the petitioner. Becoming unbearable, after about three months of marriage, the petitioner leaves the place of the husband to reside with her parents at Raipur. The

petitioner's native was Raipur. After about 20 days the petitioner goes back to Mumbai to attend a lab at IIT, at which point in time, her husband again persuaded her to come back on an assurance that he would not behave in the manner in which he was behaving in the past.

6. The petitioner's averment is that believing his words she got back to her husband, but there was no change in the behaviour of the husband but it got aggravated due to which, the petitioner permanently left the husband to reside with her parents on 4.01.2016. Later, it appears that the husband began to threaten her for her return to be with him, failing which he would leak all obscene pictures of her on social media. He also forwarded certain obscene pictures of her to the facebook account of her father and also to his WhatsApp number and also to two of her friends. It is at that juncture the petitioner registered a crime before the police at Raipur for offences punishable under Section 498A, 377, 34 of the IPC and Sections 66E and 67 of the Information Technology Act, 2000 ('the Act' for

short). Since all the incidents had happened at Bangalore, the Superintendent of Police, Raipur transferred the case to the Commissioner of Police, Bangalore to be investigated by the jurisdictional police, after which, the crime is registered at Bangalore for the offences afore-quoted.

7. The mother-in-law of the petitioner approaches this Court seeking annulment of entire proceedings on the score that she has no role played in the entire matter and she has been simply dragged into these proceedings. This Court by an order dated 8-02-2019 allowed Criminal Petition No.5977 of 2018 filed by her and quashed the proceedings insofar as the mother-in-law of the petitioner is concerned. At that point in time, the investigation was still pending at the hands of the jurisdictional police which drove the husband to file a writ petition in W.P.No.28223 of 2019 before this Court seeking completion of investigation expeditiously. This Court by its order dated 22-07-2019 directed completion of investigation and filing of a final report within two months from the date of receipt of a copy

of the order. After the direction issued by this Court in the aforesaid petition, the Police filed a charge sheet on 26-09-2019 only for the offence punishable under Section 498A of the IPC leaving out all other offences that were alleged against the husband at the time of registration of FIR.

8. In the Criminal Petition No.1675 of 2021 filed by the husband of the petitioner, this Court has granted an interim order of stay of all further proceedings against the husband. After the filing of criminal petition by the husband in Criminal Petition No.1675 of 2021, the petitioner has preferred the subject writ petition seeking the afore-quoted prayer for a re-investigation or further investigation into the matter by the Police on several grounds set out in the petition.

9. Heard Sri S.Guru Prasanna, learned counsel appearing for the petitioner/wife; Smt. K.P. Yashodha, learned High Court Government Pleader for respondent/State and Smt. Prathima S.K., learned counsel appearing for the respondent/husband.

10. The learned counsel appearing for the petitioner would vehemently argue and urge the following grounds in support of her prayer seeking further investigation:

- (i) That the charge sheet deliberately dilutes the complaint against the husband by deleting offences under Section 377 r/w Section 34 of the IPC and Sections 66E and 67 of the Act, notwithstanding the fact that the complaint made by the petitioner was in such graphic details and as such, the charge sheet could not have been filed in complete dilution of the complaint;
- (ii) That the statement recorded by the Police at Raipur at the time when the complaint was registered was also in graphic details.

Both these factors have been completely ignored by the Investigating Officer at the time of conduct of investigation.

- (iii) Sections 66E and 67 of the Act ought to have been invoked as transmission of obscene material by the husband was clearly brought out in the complaint, as he has transmitted obscene pictures of the petitioner to her own father and to two of her friends.
- (iv) The cell phone of the father of the petitioner was seized and sent to FSL for report which was not received with regard to the contents in the cell phone;
- (v) Charge sheet was filed in a hurried manner giving up all the other offences;

- (vi) The Police could not have investigated the offences under the IT Act and they had to be investigated by the Cyber Crime Police in the light of Section 161 statement of the complainant and her father.

He would therefore contend that for a fair trial to be conducted for the offences alleged against the husband, re-investigation or further investigation by a different officer should be ordered by this Court accepting the prayer that is sought for.

11. On the other hand, the learned High Court Government Pleader, on instruction, would submit that the statement recorded by the Investigating Officer did not divulge any of the offences that were alleged against the husband in the complaint or in the statements made at Raipur. It is for that reason, all the other offences were given up and only offence under Section 498A of the IPC is retained. The learned High Court Government Pleader would submit that if the Court were to order for further investigation it would be so done.

12. The learned counsel appearing for the husband would refute the submissions of the learned counsel for the petitioner

and contend that no case is made out by the petitioner for involving the husband for offences other than Section 498A of the IPC and as such, the Police have correctly invoked the proper provision. He also submits that no case is made out by the petitioner against him and as such, the proceedings deserve to be quashed.

13. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the only issue that calls for my consideration is,

‘Whether further investigation under Section 173(8) of the Cr.P.C. is called for?’

14. Before embarking upon the consideration of the prayer of the petitioner for further investigation into the matter, it is appropriate to notice the law laid down by the Apex Court with regard to further investigation of a crime and the stage at which such further investigation should be ordered at the instance of

the victim. The Apex Court in the case of **DAYAL SINGH v.**

STATE OF UTTARANCHAL¹ has held as follows:

*“21. The investigating officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the Police Manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. **Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/ omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free.** We may illustrate such kind of investigation with an example where a huge recovery of opium or poppy husk is made from a vehicle and the investigating officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity i.e. hundreds of bags of poppy husk. The investigation projects the poor cleaner as the principal offender in the case without even reference to the registered owner.*

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¹ (2012) 8 SCC 263

39. The Indian law on expert evidence does not proceed on any significantly different footing. The skill and experience of an expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible, but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. Dr C.N. Tewari was expected to prepare the post-mortem report with appropriate reasoning and not leave everything to the imagination of the Court. He created a serious doubt as to the very cause of death of the deceased. His report apparently shows an absence of skill and experience and was, in fact, a deliberate attempt to disguise the investigation.

40. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such report is not binding upon the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eyewitnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye-version given by the eyewitnesses, the court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the court. **A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting**

the case of the prosecution in its entirety but not otherwise.”

(Emphasis supplied)

The Apex Court, further, in the case of **POOJA PAL v. UNION OF INDIA**² –following the judgment in **VINAY TYAGI** has held as follows:-

“24. Be that as it may, the High Court eventually by the impugned judgment and order [Pooja Pal v. Union of India, 2014 SCC OnLine All 6350] has dismissed the writ petition. It held the view that if the appellant was not satisfied with the charge-sheet submitted by the Civil Police as well as CB-CID and the materials collected by these two agencies in course of their separate and independent investigation, and is also of the view that further investigation was required, or that some additional evidence was to be collected, she was at liberty to file an application before the Magistrate concerned to that effect so as to enable the trial court to pass appropriate orders thereon. It further held that so far as the adduction of additional evidence was concerned, the appellant would have every opportunity to produce the same or ask there for also by making an appropriate application at the time of trial.

... ..

64. The content and scope of the power under Article 226 of the Constitution of India to direct investigation by CBI in a cognizable offence, alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government fell for scrutiny of this Court in Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571: (2010) 2 SCC (Cri) 401]. While examining the issue in the context of the power of judicial review as embedded in the constitutional scheme, it was held that no Act of Parliament could exclude or curtail the powers of the constitutional courts in that regard. Reiterating, that the power of judicial review is an integral part of the basic

² (2016) 3 SCC 135

structure of the Constitution, it was underlined that the same was essential to give a pragmatic content to the objectives of the Constitution embodied in Part III and other parts thereof. In elaboration, it was held that Article 21 of the Constitution not only takes within its fold, the enforcement of the rights of the accused but also the rights of the deceased. It was predicated that the State has a duty to enforce the human rights of the citizens providing for fair and impartial investigation, against any person accused of commission of any cognizable offence.

... ..

67. In *Bharati Tamang case* [*Bharati Tamang v. Union of India*, (2013) 15 SCC 578; (2014) 6 SCC (Cri) 566] on behalf of the appellant, accusation of tardy prosecution of the case, and free and open movement of the key accused persons in the city avoiding arrest were made as well. The plea of the impleaded accused persons that the appellant after the demise of her husband had initiated the writ proceedings for political gain was rejected. Their contention based on Section 319 of the Code that in course of the trial, on availability of sufficient evidence, any person not being an accused could be ordered to be tried, was also negated. The propositions expounded in *Zahira Habibulla H. Sheikh* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 · 2004 SCC (Cri) 999] qua the duty of the court to ensure fair investigation by remedying the deficiencies and defaults therein so as to bring forth full and material facts to prevent miscarriage of justice were reiterated. **It was concluded that when the courts find extraordinary or exceptional circumstances rendering reinvestigation imperative, in such eventualities even de novo investigation can be ordered. While ruling that in case of discernible deficiency in investigation or prosecution, the courts have to deal with the same with iron hand appropriately within the framework of law, it was underlined that in appropriate cases, even if charge-sheet was filed, it was open for the High Court and also this Court to direct investigation of the case to be handed over to CBI or to any other agency or to direct investigation de novo in order to do complete justice, in the facts of the case.**

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69. This Court in *Babubhai* [*Babubhai v. State of Gujarat*, (2010) 12 SCC 254; (2011) 1 SCC (Cri) 336] while examining the scope of Section 173(8) of the Code, did recall its observations in *Manu Sharma v. State (NCT of Delhi)* [*Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1; (2010) 2 SCC (Cri) 1385] that it is not only the responsibility of the investigating agency but as well as of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It underlined that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such a drill should not, *prima facie*, be indicative of a biased mind and every effort should be made to bring the guilty to law de hors his position and influence in the society as nobody stands above law. **It propounded that the word “ordinarily” applied under Section 173(8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct normally for further investigation, and not for reinvestigation. It was, however, added as a sequitur that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for de novo investigation as well. It was observed that if an investigation has not been conducted fairly, the resultant charge-sheet would be invalid. It was held as well that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus, the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.**

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87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

88. The expression “fair and proper investigation” in criminal jurisprudence was held by this Court in *Vinay Tyagi v. Irshad Ali* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762;(2013) 4 SCC (Cri) 557] to encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.”

(Emphasis supplied)

15. The Apex Court, in the afore-extracted judgments, has laid down the parameters of consideration of the issue while directing reinvestigation. It is also indicated that the Court considering the plea for reinvestigation should clearly narrate, on going through the material on record, as to the grounds for reinvestigation/further investigation. Therefore, it becomes imperative to notice the facts and grounds on which the

petitioner has sought reinvestigation/further investigation into the matter and its tenability.

16. The afore-quoted facts and narration of events are a matter of record and are therefore, not reiterated. On the bedrock of the principles laid down by the Apex Court in the aforesaid judgments, the case of the petitioner requires to be considered and for consideration of the prayer of the petitioner, the genesis of the issue is necessary to be revisited. The marriage between the petitioner and her husband Vikram Vincent is not in dispute. The petitioner after going away from the husband registers a crime before the Police at Raipur. Since the petitioner was a resident of Raipur, the complaint was registered before the Police at Raipur. The complaint reads as follows:

“It is humbly requested that I, Richa Mishra, was married to Shri Vikram Vincent, which was solemnized in Bangalore on 17.06.2015 under the Special Marriage Act. I was violently sexually abused by my husband after the marriage. On my protest against all these, I was assaulted, abused and subjected to the mental torture. With the passage of time, the sexual abuse by my husband became more violent and unnatural sexual relations were made with me forcefully, due to which, I was unable to move. I had given this information to my

mother-in-law Mrs. Juliana R. Vincent; however, she never opposed such criminal acts of her son considering the same to be proper, and the violent conduct was continued with me.

My husband would always give me mental and physical torture for establishing group sexual relations; and whenever I would oppose, he would always assault and abuse me, torture me, and I was treated cruelly. Being fed-up by all these cruel conducts, I left my in-laws house on 25.09.2015 and came to my parental house at Raipur.

*My husband Mr. Vikram Vincent has filed a petition under section 22 of Special Marriage Act before the Family Court at Bangalore; but contrary to the prayers made therein, my husband made my picture viral on the social media which is objectionable and obscene, observing which, all my friends and relatives are seeking clarification from me, and even I am myself feeling quite embarrassed observing these pictures. Due to this, my family and I are feeling insulted in the society. **While living in the matrimonial relationship, my husband has made my obscene videos which is in his possession and he is threatening that he will make my obscene videos viral, as he had earlier made my obscene pictures viral. Due to this, my family and I are scared.***

Hence, it is prayed that punitive and proper action may kindly be taken against my husband Vikram Vincent, aged 33 years, S/o Late A.M. Vincent; and my mother-in-law, Smt. Juliana R. Vincent, W/o Late A.M. Vincent, both residents of H.No.6, 13 Cross R.a.Road, Ejjiipur, Bangalore, Karnataka, Pin-560 047, for their criminal acts and also for criminal threats being given by them."

(Emphasis added)

The complaint was with regard to the husband indulging in unnatural volition and forceful sex upon the petitioner and other cruel behavior, as also transmission of obscene pictures of the petitioner. The complaint was registered on 21-03-2017. On registration of the complaint, a FIR is also registered by the Police at Raipur for offences punishable under Sections 498A, 377, 34 of the IPC and Sections 66E and 67 of the Act. Since incidents had happened in Bangalore, the Police before whom the complaint was registered communicated to the Superintendent of Police at Raipur, to transfer the matter to Bangalore upon which, the case was transferred to Bangalore wherein a FIR came to be registered by the jurisdictional Police at Bangalore on 04-05-2017 in Crime No.89 of 2017 for the afore-quoted offences. The complaint was against the husband Vikram Vincent and the mother-in-law of the petitioner. The mother-in-law approaching this Court and the proceedings against the mother-in-law being quashed is not the issue in the subject matter. Therefore, the facts for quashment of proceedings against the mother-in-law are not noticed.

17. Before the case was transferred to Bangalore, at the time of registration of the crime at Raipur, statements of both the petitioner and her father were recorded by the Police under Section 161 of the Cr.P.C. Those statements are germane to be noticed and are extracted hereunder for the purpose of quick reference:

The statement of the complainant reads as follows:

"STATEMENT"

Smt. Richa Mishra, W/o Vikram Vincent, aged 32 years, R/c H.No.A-17, Gulmohar Vatika, Mahaveer Nagar, Raipur (C.G.) Mob.No.8953887848.

I am residing with my presents at above address for 14 months. My father is a retired officer. On 22.07.2010, I went to I.I.T., Mumbai to study M.Tech. I used to study while residing in the hostel. In the year 2013, I was selected for the Ph.D. and that time I used to study in Mumbai. Vikram Vincent was also doing his Ph.D. in the I.I.T., Mumbai with me. We both got acquainted and we used to converse with each other through Facebook. We got married on 10.06.2015 with mutual consent. The marriage was solemnized in Bangalore. My father also attended the marriage. After marriage, I started living with Vikram in his house. Vikram started having anal sex with me. Whenever I opposed, he used to assault and abuse me. Whenever I was in pain, Vikram used to say that you are wild and do not know how to please your husband. Once, as I was having lot of pain due to such unnatural sex, I asked him to take me to the doctor, but he did not take

me there. My husband used to do unnatural sex with me every night. When I informed my mother-in-law Juliana R.Vincent about the said act of unnatural sex, and physical and mental torture being inflicted upon me by my husband who used to assault, abuse and physically harass me a lot; she said that you simply obey Vikram. She rather asked me, why should you oppose him and irritate him, and suggested to co-operate with him whatever and in whatsoever manner my husband desire. My mother-in-law never asked my husband for not doing unnatural sex with me. My husband always used to say that I will tell each and everything to your father.

After some time, I came to Mumbai alone. Vikram started saying that the gifts given by your parents were of low quality, and you did not bring anything during the marriage, and your father has not given anything. He always used to harass me like this. He asked to make relations with other girls; and when I opposed, he assaulted me. My husband constantly tortured me mentally and physically, and pressurized me to make relation with other girls, and when I opposed, he would abuse and assault me and would behave cruelly with me. I have mentioned in my complaint about my husband's desire of having group sex, but no group sex has been done, and only unnatural sex has been done with me by my husband, and he used to pressurize me to make sexual relations with other boys also, so that, he could see me doing such act. Whenever I would refuse for all these, he used to beat me up. Thereafter, on 25.09.2015, I left my in-laws house and came to my parental house in Raipur.

After 20 days I went to Mumbai, and Vikram was also there in Mumbai. For 20-25 days, Vikram kept persuading me repeatedly that this will not happen again in future, and asked me to come back. Then I

*believed his words and went to him on 15th November, and we both met in the lab of IIT, Mumbai. **At that time Vikram again asked me to have unnatural sex with him, and on my refusal, he started abusing me and even assaulted me which made me very scared and upset. That time, Vikram applied Vaseline cream in my anal and committed unnatural sex with me; and while having sex, he said that “your vagina is not virgin so I want your anus.” Due to this, I became quite sad and left the lab immediately and went to my room and never met him again. Thereafter, on 04.01.16, I came to my parental home forever.***

I have not lodged any report till date hoping that, my husband will improve as he is a literate person. Vikram always used to communicate with me through SMS, and he used to abuse me and asked me to come back. He told me to send my nude pictures through mobile phone. Thus, my father informed all these matters to Vikram’s mother and requested her to ask Vikram for not doing such acts. On 09.10.16, Vikram sent two obscene pictures of mine to my father’s Facebook account from his Id – 100010620168790@facebook.com, but as my father did not have any information about it, therefore he did not open his account nor viewed the said pictures. However, Vikram sent me one SMS which reads that “it is sent to your father”, which he sent from his mobile number 9930846654, and also threatened me for not lodging any complaint with the police. He threatened through SMS that, if I will lodge any complaint with the police, then he will publish about my character in the newspapers in Mumbai, Raipur Kanpur, etc. On 17.11.16, Vikram again posted those obscene pictures of mine from his WhatsApp number 9969249984 to my father’s WhatsApp Number 9753692467. I and my father got scared due to all these, and due to insult in the society we did not consult anyone nor lodged any report against him considering that he may not repeat

such act again. Vikram telephonically contacted my friend Malvika Rao, Debolina Chakraborty and others, and asked them that, as I have left the house, therefore, make me understand to come back. As my friends could not help, my husband Vikram later sent my said obscene pictures to my said friends Malavika Rao and Debolina Chakraborty also, which he had earlier sent to my father. I changed my mobile number, however, Vikram started harassing my younger sister, brother and father by sending mails. I got quite scared and was feeling mentally harassed. Now, I and my father considered it necessary to lodge the report with the police.

My husband has tortured me mentally and physically both, and abused me on my denial for having unnatural sex with him. He even used to say that, no proper gift has been given by my father during the marriage. He has sent my obscene pictures on the mobile phone of my father and my friends. He also harassed me mentally by showing the images of my private parts to my father and my friends without my consent. Though, I informed all these things to Vikram's mother but she did not help me, therefore I am lodging this report."

(Emphasis added)

The statement of the complainant's father reads as follows:

"STATEMENT

Surendra Nath Mishra, S/o Late Ram Vilas Mishra, aged 61 years, R/o.A-17, Gulmohar Vatika, Mahaveer Nagar, Raipur (C.G.). Mob.No.9753692467.

I reside at the above address. I am a retired officer. I have three children. Richa is my elder daughter who studied up to B.E. in Raipur (C.G.), and thereafter, she went to IIT, Mumbai for doing M.Tech. After sometime, she started doing Ph.D. That time,

Vikram Vincent was also doing Ph.D. in the same college. Both got acquainted with each other, about which my daughter informed me sometime in December 2013. After sometime, Vikram Vincent got married with my daughter at Bangalore on 10.06.2015 with his and our family's consent. On 12.06.2015, I returned from Bangalore, and there was no complaint whatsoever that time.

In July 2015, Richa came back to Mumbai and informed me telephonically that her husband Vikram and mother-in-law Juliana were abusing her, saying that, the gifts which have been given to them at the time of marriage were not of good quality. They alleged that, only wrappers were good and the items kept inside were of bad quality, and they started taunting my daughter that you North Indian people conduct in this manner only, and you brahmins cannot offer good gifts. That time, I made my daughter understand that girls have to bear something after their marriages, and also consoled her saying that I will talk to Vikram. Vikram always used to abuse and assault Richa, however, considering that the things will be settled amicably sooner or later, that she did not give many vital information to me.

In September 2015 Richa contacted me on phone and informed that she is leaver her Ph.D. course and going to her in-law's house at Bangalore, which I consented. However, Vikram said that she cannot come to Bangalore until there is counseling between them. Richa called me and informed about the same, and I suggested her to go to Bangalore as it was her home. That time, Richa informed me that her husband has tortured her mentally and physically by having unnatural sex with her, due to which she was feeling quite harassed.

After some time, Richa went to Bangalore, and after about 4-5 days she informed her mother-in-law about the unnatural sexual intercourse being done with her.

However, her mother-in-law said that whatever Vikram did was fine, and suggested her to obey him and keep him happy. Richa felt that neither her husband nor her mother-in-law would consider about her pain. That time Vikram's mother called me and also sent complaining messages against my daughter, which I replied. This happened on 24.09.2015. In fact, that day, while quarrelling with Richa, her mother-in-law came out from her house and started making complaints against her to the neighbors. My daughter was crying and she was very nervous that time, and was unable to decide about her next step. Though she requested, however, her mother-in-law did not ask her son for not having unnatural sex with Richa, rather she started taking his side. I asked Richa to come Raipur immediately by flight. On the same day, Richa arrived at Raipur and narrated about the mental and physical torture caused to her by her husband and mother-in-law.

After staying some days in Raipur, she went back to Mumbai to complete her course at IIT, and then came back to Raipur on 04.01.2016. Due to extreme mental and physical torture to my daughter Richa by her husband, black spots developed beneath her eyes. I was quite desirous of sending my daughter back to her in-law's house after betterment in her condition and after talking to her mother-in-law and husband personally by visiting Bangalore. Even my daughter wanted the same, however, on 3rd April 2016, Vikram suddenly arrived at Raipur and expressed his ill-feelings about my daughter Richa. On this point, we had heated arguments, and at the same time, I also informed about the incident to my daughter's mother-in-law Juliana by message. Thereafter, I asked Vikram that I am going to call the police, and Vikram left my home immediately. Vikram said repeatedly and even threatened me that he will send the obscene pictures of my daughter through mail, and also repeated the same before Richa. On 09.10.2016, Vikram had sent obscene pictures of my daughter to my Facebook Id, from his Id

100010620168790@facebook.com. Since I had no knowledge about it, so I did not open and see the same that time. However, Vikram sent one SMS to my daughter's no.9930846654 from his mobile no.9449718245 that – "It is sent to your father", which was informed to me by my daughter, still I did not pay any heed upon it. Thereafter, on 17.11.16 Vikram again sent two obscene pictures of my daughter to my WhatsApp No.9753692467 from his WhatsApp No.9969249984, which caused a lot of mental agony to me and my daughter. However, I still considered that he may apologize for this. I wanted to forgive him and re-settle my daughter at her home. However, Vikram started sending messages against Richa to my other children and acquaintances, though they do not have any concern with this matter. Thus, being compelled by the circumstances, Richa and I had to initiate this legal action, and we considered that it would be proper to lodge the report. Vikram has mentally and physically tortured my daughter and abused her on opposing for unnatural sex, and by saying that no good gifts have been given by me during the marriage, and he also send her obscene pictures on my mobile phone as well as on the mobile phones of my other acquaintances. He also harassed my daughter by showing the images of her private parts in the photo without her consent. My daughter sought help and intervention from Vikram's mother, but instead of helping her, she rather tortured my daughter mentally and physically while quarrelling with her."

When the Police were still investigating into the matter, the husband approaches this Court in Writ Petition No.28223 of 2019 seeking a direction for completion of investigation expeditiously. This Court directs filing of final report within two months. It is after the said direction the Police filed a final

report against the husband of the petitioner only under Section 498A of the IPC, as the proceedings against the mother-in-law had been quashed. The charge sheet reads as follows:

“ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂ.4 ರಲ್ಲಿ ಕಂಡ ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಪ್ರೀತಿಸಿ, ದಿನಾಂಕ 10/06/2015 ರಂದು ಮದುವೆಯಾಗಿದ್ದು, ಮದುವೆಯಾದ ನಂತರ ಸೆಪ್ಟೆಂಬರ್ - 2015 ವರೆಗೆ ವಿವೇಕನಗರ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರಿದ ಆರೋಪಿ-1 ರವರ ಮನೆಯಾದ ಈಜಿಪುರ, ಆರ್.ಎ.ರೋಡ್, 13ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮನೆ ನಂ.6 ರಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಈ ಸಮಯದಲ್ಲಿ ಆರೋಪಿಯು ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಸರಿಯಾಗಿ ನೋಡಿಕೊಳ್ಳದೆ, ಅವಾಚ್ಛ ಶಬ್ದಗಳಿಂದ ನಿಂದಿಸಿ ಮತ್ತು ಅನೈಸರ್ಗಿಕ ಸಂಬೋಗಕ್ಕೆ ಆಸೆ ವ್ಯಕ್ತಪಡಿಸಿದ್ದು, ಸಾಕ್ಷಿ-1 ರವರು ನಿರಾಕರಿಸಿದ್ದರಿಂದ ಅವರಿಗೆ ಮಾನಸಿಕವಾಗಿ ಹಿಂಸೆ ನೀಡಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ಆರೋಪಿಯ ವಿರುದ್ಧ ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ.”

If the complaint registered at Raipur and the statements recorded by the Police at Raipur are juxtaposed with the findings of investigation/final report filed by the Police, it would unmistakably reveal gross variance. The graphic details in the complaint and the contents of the statements recorded by the Police are completely thrown to the winds by the Investigating Officer. The offence punishable under Section 377 of the IPC or under the Act is given a go-bye. This gross variance is what has driven the petitioner to this Court. The variance is pellucid, as the complaint narrates the torture and abuse meted out against

petitioner by her husband for the purpose of performing unnatural sex. The complaint further narrates again in graphic details as to how the husband has intimidated the petitioner, threatened her and also transmitted obscene/nude pictures of the petitioner to her father and to her friends. This is the statement both by the petitioner and her father. This is completely ignored by the Investigating Officer.

18. Though transmission of obscene pictures is the complaint and cell phone of the petitioner being seized and sent to FSL, the report of FSL does not even form a part of the charge sheet. Whether the report is received or not is not even made aware of the Court while filing the charge sheet. When cell phone of the father of the petitioner was seized, the cell phone of the sender i.e., the husband was not seized as that ought to have been seized by the Police to investigate offences punishable under Sections 66E and 67 of the Act. Sections 66E and 67 of the Act read as follows:

“66E. Punishment for violation of privacy.—Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

Explanation.—For the purposes of this section—

(a) “transmit” means to electronically send a visual image with the intent that it be viewed by a person or persons;

(b) “capture”, with respect to an image, means to videotape, photograph, film or record by any means;

(c) “private area” means the naked or undergarment clad genitals, public area, buttocks or female breast:

(d) “publishes means” reproduction in the printed or electronic form and making it available for public;

(e) “under circumstances violating privacy” means circumstances in which a person can have a reasonable expectation that—

(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.”

... ..

67. Punishment for publishing or transmitting obscene material in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and

corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

Section 66E of the Act deals with punishment for offence against the person whoever intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent and violating privacy of that person is liable for punishment. Section 67 of the Act deals with punishment for publishing or transmitting material contained sexually explicit act etc., in electronic form.

19. The complaint and the statement clearly brought out the offences committed by the husband in terms of ingredients of Sections 66E and 67 of the Act. The Police, while conducting investigation, could not have ignored the presence of ingredients for invoking the said offences. Section 377 of the IPC deals with punishment for unnatural sex and reads as follows:

*“377. **Unnatural offences.**—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

Section 377 of the IPC directs unnatural carnal intercourse against the order of nature to be punishable. If the provisions of law, the complaint and the statements recorded by the Police are read in tandem, it would unmistakably demonstrate registration of crime for the offence punishable under Section 377 of the IPC.

20. The crime was no doubt registered for all the afore-quoted offences, but the shady investigation conducted by the jurisdictional police has led to filing of a charge sheet only for an offence under Section 498A of the IPC. Therefore, this becomes a classic case where the investigation has been so shoddy that a further investigation in to the matter is needed. In view of the preceding analysis, it also becomes a case where the head of the department, either the State or the Commissioner of Police

should take stock of such shoddy investigations by investigating officers, who either lack competence or deliberately indulge in such investigations. It is high time the head of the Department sets its house in order, by appropriately dealing with such investigating officers on the departmental side. The further investigation as is opined hereinabove, therefore, shall be handed over to any other investigating officer, other than the one who has already investigated into the subject crime.

21. The companion criminal petition is filed by the husband for quashing the charge sheet filed against him for offence punishable under Section 498A of the Cr.P.C. on the ground that the allegations made do not constitute an offence for invoking the said provision, as none of the ingredients of Section 498A of the IPC is present in the complaint or in the charge sheet filed by the Police. Since the criminal petition is tagged to the writ petition seeking further investigation, the learned counsel submits that the accused also must have a say if further investigation is directed to be ordered. This plea of the learned

counsel that the accused has to be heard while further investigation is to be directed is unacceptable, in the light of the judgment rendered by the Apex Court in the case of

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AND OTHERS³ wherein the Apex Court holds as follows:

*“7. Having heard learned counsel appearing on behalf of the respective parties and the private respondent herein, we are of the opinion that as such no error has been committed by the High Court dismissing the application submitted by the appellant herein to implead him in the Special Criminal Application filed by the private respondent herein challenging the order passed by the learned Chief Judicial Magistrate rejecting his application for further investigation under Section 173(8) Cr.P.C. with respect to one another accused namely Shri Bhaumik against whom no charge sheet has been filed till date. Therefore, it is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) Cr.P.C. How he can be said to be a necessary and a proper party. It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) Cr.P.C. for further investigation, as observed by this Court in the case of **W.N. Chadha** (supra); **Narender G.Goel** (supra) and **Dinubhai Bhabhai Solanki** (supra). In the case of **Dinubhai Baghabhai Solanki** (supra) after considering one another decision of this Court in the case of **Sri Bhagwan Samardha v. State of A.P.**- (1999) 5 SCC 740, it is observed and held that there is nothing in Section 173(8) Cr.P.C. to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In **Sri Bhagwan Samardha** (supra), this Court in paragraph 11 held as under:*

³ **Crl.Appeal No.353 of 2020 decided 2-03-2020**

“11. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

Therefore, when the proposed accused against whom the further investigation is sought, namely Shri Bhaumik is required to be heard at this stage, there is no question of hearing the appellant-one of the co-accused against whom the charge sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. Therefore, the High Court is absolutely justified in rejecting the application submitted by the appellant to implead him as a party respondent in the Special Criminal Application.”

The Apex Court holds that the accused is not a necessary or a proper party in a petition seeking further investigation or reinvestigation, the question of hearing the accused would not arise. The said finding would be applicable in all its fours against the contention of the learned counsel for the husband in the companion criminal petition No.1675/2021.

22. The husband has preferred Criminal Petition No.1675 of 2021, companion petition to the writ petition filed by the wife contending that the charge sheet filed by the Police in C.C.No.57405 of 2019 does not make out any offence of Section 498A of the IPC and, therefore, proceedings against the husband should be quashed in its entirety. In view of the elaborate reasons recorded hereinabove for directing further investigation, the proceedings against the husband, petitioner in the criminal petition No.1675/2021, cannot be quashed at this juncture. Even otherwise, on a perusal of the averments in the petition filed by the husband insofar as it concerns Section 498A Cr.P.C., there is no document that is so unimpeachable placed on record by the husband to demonstrate his innocence. The time for quashing the proceedings against the husband even for Section 498A has not arisen. Therefore, I decline to interfere with the proceedings against the husband even for offence punishable under Section 498A of the IPC.

23. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.2678 of 2022 is allowed and a mandamus is issued to the 1st respondent-Commissioner of Police, to direct conduct of further investigation into Crime No.89 of 2017 by an Investigating Officer, other than the one who had investigated Crime No.89 of 2017, who shall bear in mind the observations made in the course of this order.
- (ii) Further investigation into the matter shall be completed and report of such further investigation shall be placed before the learned Magistrate before whom C.C.No.57405 of 2019 is being tried, within two months from the date of receipt of the order. Till a report of such further investigation is filed by the Police, the trial shall not be continued.
- (iii) It is needless to observe that the parties to the *lis* shall co-operate with the afore-directed further investigation and filing of a report.
- (iv) Criminal Petition No.1675 of 2021 stands dismissed.
- (v) It is made clear that the observations made in the course of this order shall not bind or influence the Investigating Officer or later on, proceedings before the competent Court.

**Sd/-
JUDGE**

bkp
CT:MJ