

ABDUL REHMAN & ORS.

v.

K.M. ANEES-UL-HAQ

(Criminal Appeal Nos.2090-2093 of 2011)

NOVEMBER 14, 2011

[CYRIAC JOSEPH AND T.S. THAKUR, JJ.]

Code of Criminal Procedure, 1973:

s.195 – Complaint filed by appellant before CAW cell accusing respondent of commission of offence punishable under s. 406 read with s. 34 IPC and ss.3 and 4 of Dowry Prohibition Act – Complaint by respondent alleging that appellant had instituted criminal proceedings against him without any basis and falsely charged him with commission of offences knowing that there was no just or lawful ground for such proceedings or charge and thereby committed offences punishable u/ss.211 and 500 read with s.109, 114 and 34 IPC – Maintainability of – Plea of appellant that bar of s.195 was attracted to the complaint filed by the respondent inasmuch as the offence allegedly committed by them was “in relation to the proceedings” in the court which the respondent had approached for grant of bail and the court concerned had granted the bail prayed for by him – Held: The bail proceedings conducted by Sessions Judge in connection with the case which appellant had lodged with CAW Cell were judicial proceedings and the offence punishable under s.211 IPC alleged to have been committed by the appellant related to the said proceedings – Such being the case the bar contained in s.195 was attracted to complaint filed by respondent – Complaint of respondent was not, thus, maintainable – Penal Code, 1860 – ss.406 r/w s.34 – Dowry Prohibition Act – ss.3 and 4.

s.195 – Scope and ambit of – Discussed.

A Aggrieved by the institution of criminal complaint
against him by the appellant before the CAW cell under
Section 406 read with Section 34 IPC and Sections 3 and
4 of the Dowry Prohibition Act, the respondent filed a
B complaint alleging that the appellants had instituted
criminal proceedings against him without any basis and
falsely charged him with commission of offences
knowing that there was no just or lawful ground for such
proceedings or charge and thereby committed offences
punishable under Sections 211 and 500 read with
C Sections 109, 114 and 34 IPC. The Magistrate held that
there was sufficient material to show commission of
offences punishable under Sections 211 and 500 IPC. The
appellant preferred a criminal revision which was
dismissed as time barred. The appellant then filed a
D petition under Section 482 Cr.P.C. before the High Court
for quashing complaint pending before the Magistrate
and all proceedings consequent thereto. The High Court
dismissed the said petition holding that since no judicial
proceedings were pending in any court at the time when
the complaint under Sections 211 and 500 IPC was filed
E by the respondent-complainant, the bar contained in
Section 195 Cr.P.C. was not attracted nor was there any
illegality in the order passed by the Magistrate
summoning the appellants to face trial. The instant
F appeals were filed challenging the order of the High
Court.

Allowing the appeals, the Court

G HELD: 1.1. A plain reading of Section 195, Cr.P.C.
shows that there is a legal bar to any Court taking
cognizance of offences punishable under Sections 193
to 196 (both inclusive), 199, 200, 205 to 211 (both
inclusive) and 228 when such offence is alleged to have
been committed in, or in relation to, any proceeding in
any Court except on a complaint in writing, of that Court
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or by such officer of the Court as may be authorised in that behalf, or by some other Court to which that Court is subordinate. That a complaint alleging commission of an offence punishable under Section 211 IPC, "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision. It is common ground that the offence in the present case is not alleged to have been committed "in any proceedings in any Court". [Para 7] [1041-C-F]

1.2. Upon the filing of the complaint by the appellants with the CAW Cell, the respondent-complainant had sought an order of anticipatory bail from the Sessions Judge and an order granting bail was indeed passed in favour of the respondent. On completion of the investigation into the case lodged by the appellants under Section 406 read with Sections 3 and 4 of Dowry Prohibition Act, a charge sheet under Section 173 Cr.P.C. was filed before the court competent to try the said offences in which the respondents wer released on regular bail. The filing of the charge sheet, however, being an event subsequent to the taking of cognizance by the Magistrate on the complaint filed by the respondent-complainant, the same can have no relevance for determining whether cognizance was properly taken. The question all the same would be whether the grant of anticipatory bail to the respondent by the Sessions Judge would constitute judicial proceedings and, if so, whether the offence allegedly committed by the appellants could be said to have been committed in relation to any such proceedings. [Para 8] [941-G-H; 942-A-C]

1.3. The bail proceedings conducted by the Court of Sessions Judge in connection with the case which the

- A appellants had lodged with CAW Cell were judicial proceedings and the offence punishable under Section 211 IPC alleged to have been committed by the appellants related to the said proceedings. Such being the case the bar contained in Section 195 of the Cr.P.C. was clearly
- B attracted to the complaint filed by the respondent. The Magistrate and the High Court had both failed to notice the decision of this Court in **Kamlapati Trivedi's and **SK. Bannu's* cases and thereby fallen in error in holding that the complaint filed by the respondent was maintainable.
- C The High Court also failed to appreciate that the real question that fell for consideration before it was whether the bail proceedings were tantamount to judicial proceedings. That question was left open by this Court in ****M.L Sethi's* case but was squarely answered in **Kamalapati Trivedi's* case. Once it is held that bail
- D proceedings amounted to judicial proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape from the conclusion that any offence punishable under Section 211 IPC could be taken cognizance of only at the instance
- E of the Court in relation to whose proceedings the same was committed or who finally dealt with that case. A charge-sheet has already been filed against the respondent by the CAW Cell before the Competent Court. The respondent would, therefore, have a right to move
- F the said Court for filing a complaint against the appellants for an offence punishable under Section 211 IPC or any other offence committed in or in relation to the said proceedings at the appropriate stage. It goes without saying that if an application is indeed made by the
- G respondent to the Court concerned, it is expected to pass appropriate orders on the same having regard to the provisions of Section 340 of the Code. So long as the said proceedings are pending before the competent Court it would neither be just nor proper nor even legally
- H permissible to allow parallel proceedings for prosecution

of the appellants for the alleged commission of offence punishable under Section 211 IPC. [Paras 14, 15] [1047-B-H; 1048-A-B]

Kamlapati Trivedi v. State of West Bengal 1980 (2) SCC 91: 1979 (2) SCR 717; **State of Maharashtra v. SK. Bannu and Shankar (1980) 4 SCC 286: 1981 (1) SCR 694; *M.L. Sethi v. R.P. Kapur AIR 1967 SC 528: 1967 SCR 520 – relied on.*

2. Allowing the respondents to continue with the prosecution against the appellants for the offence punishable under Section 500 IPC would not subserve the ends of justice and may result in the appellants getting vexed twice on the same facts. Any complaint under Section 500 IPC may become time barred if the complaint already lodged is quashed. That is not an insurmountable difficulty and can be taken care of by moulding the relief suitably. It would be appropriate if the orders passed by the Metropolitan Magistrate and that passed by the High Court are set aside and the complaint filed by the respondent directed to be transferred to the Court dealing with the charge sheet filed against the respondent. The said court shall treat the complaint as an application for filing of a complaint under Section 211 of the IPC to be considered and disposed of at the final conclusion of the trial; having regard to the provisions of Section 340 of IPC and the finding regarding guilt or innocence of the respondent as the case may be recorded against him. The respondent shall also have the liberty to proceed with the complaint in so far as the same relates to commission of the offence punishable under Section 500 of the IPC depending upon whether there is any room for doing so in the light of the findings which the court may record at the conclusion of the trial against the respondent. [Para 16] [1048-G-H; 1049-A-C]

Badri v. State ILR (1963) 2 All 359 – referred to.

A	Case Law Reference:		
	1967 SCR 520	relied on	Paras 4, 9, 14
	ILR (1963) 2 All 359	referred to	Para 9
B	1979 (2) SCR 717	relied on	Paras 11, 14
	1981 (1) SCR 694	relied on	Paras 13, 14

C **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 2090-2093 of 2011.**

From the Judgment & Order dated 26.2.2008 of the High Court of Delhi in CrI. M.C. No. 4183-86 of 2006.

D **Chandra Shekhar, Saurabh Upadhyay, Meghna De, S.K. Verma for the Appellants.**

T.S. Doabia, Sdhna Sandhu, Priyanka Mathur Sardana, Anil Katiyar, P.D. Sharma, Dr. Alok K. Sharma for the Respondent.

E **The Judgment of the Court was delivered by**

T.S. THAKUR, J. 1. Leave granted.

F **2. The short question that arises for determination in these appeals is whether the complaint filed by the respondent-complainant against the appellants, alleging commission of offences punishable under Sections 211, 500, 109, and 114 read with Section 34 of Indian Penal Code, 1860 was barred by the provisions of Section 195 of the Code of Criminal Procedure, 1973. The High Court of Delhi has, while dismissing**

G **the petition under Section 482 of the Cr.P.C. filed by the appellants held that the complaint in question is not barred and that the Metropolitan Magistrate, Delhi, committed no error of law or jurisdiction in taking cognizance of the offence punishable under Sections 211 and 500 IPC. The appellants**

H **who happen to be the accused persons in the complaint**

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forementioned have assailed the said finding in the present appeal by special leave. The appellants contend that the bar contained in Section 195 Cr.P.C. was attracted to the complaint filed by the respondent inasmuch as the offence allegedly committed by them was "in relation to the proceedings" in the court which the Respondent-complainant had approached, for the grant of bail and in which the court concerned had granted the bail prayed for by him. What is the true purport of the expression "in relation to any proceedings in any Court" appearing in Section 195(1)(b)(i) of the Code of Criminal Procedure, 1973 and in particular whether the grant of bail to the respondent in connection with the FIR registered against him would attract the bar contained in Section 195 Cr.P.C is all that falls for determination. Before we advert to the provisions of Section 195 of the Cr.P.C., we may briefly set out the facts in the backdrop.

3. Appellant-Abdul Rehman lodged a complaint with the Crime against Women (CAW) Cell, Nanakpura, Moti Bagh, New Delhi, accusing the Respondent-K.M. Anees-Ul-Haq and four others of commission of an offence punishable under Section 406 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The complainant's case is that the accusations made by the appellant in the report lodged with the Women Cell were totally false and fabricated. In particular, allegations regarding demand of dowry as a condition precedent for performance of *Nikah* between the complainant's nephew and Ms Aliya-appellant No.3 in this appeal were also false and unfounded. It was on that premise that the respondent filed a complaint alleging that the appellants had instituted criminal proceedings against him without any basis and falsely charged him with commission of offences knowing that there was no just or lawful ground for such proceedings or charge and thereby committed offences punishable under Sections 211 and 500 read with Sections 109, 114 and 34 IPC.

4. The Metropolitan Magistrate entertained the complaint,

A recorded statements of three witnesses produced by the
respondent and came to the conclusion that there was sufficient
material to show commission of offences punishable under
Sections 211 and 500 IPC. While doing so, the Magistrate
placed reliance upon a decision of this Court in *M.L. Sethi v.*
B *R.P. Kapur* [AIR 1967 SC 528] to hold that a complaint for
commission of an offence punishable under Section 211 IPC
is maintainable even at the stage of investigation into a First
Information Report.

C 5. Aggrieved by the order passed by the Metropolitan
Magistrate, the appellant preferred a Criminal Revision before
the Additional Sessions Judge, New Delhi, who dismissed the
same as barred by limitation. The appellant then preferred a
petition under Section 482 Cr.P.C. before the High Court of
D Delhi for quashing complaint No.180/1 of 2002 pending before
the Metropolitan Magistrate and all proceedings consequent
thereto. The High Court has, as mentioned above, dismissed
the said petition holding that since no judicial proceedings were
pending in any Court at the time when the complaint under
Sections 211 and 500 IPC was filed by the respondent-
E complainant, the bar contained in Section 195 Cr.P.C. was not
attracted nor was there any illegality in the order passed by the
Metropolitan Magistrate summoning the appellants to face trial.

F 6. We have heard learned counsel for the parties at
considerable length and perused the order under challenge.
Section 195 of the Cr.P.C. to the extent the same is relevant
for our purposes may be extracted at this stage:

G “195. *Prosecution for contempt of lawful authority of
public servants, for offences against public justice and
for offences relating to documents given in evidence. –*
(1) No Court shall take cognizance –

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H xxx xxx xxx

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(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

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xxx xxx xxx"

7. A plain reading of the above would show that there is a legal bar to any Court taking cognizance of offences punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except on a complaint in writing, of that Court or by such officer of the Court as may be authorised in that behalf, or by some other Court to which that Court is subordinate. That a complaint alleging commission of an offence punishable under Section 211 IPC, "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision. It is common ground that the offence in the present case is not alleged to have been committed "in any proceedings in any Court". That being so, the question is whether the offence alleged against the appellants can be said to have been committed "in relation to any proceedings in any Court".

8. It is not in dispute that upon the filing of the complaint by the appellants with the CAW Cell the respondent-complainant had sought an order of anticipatory bail from the Additional Sessions Judge, Karkardooma, Delhi, nor is it disputed that an order granting bail was indeed passed in favour of the respondent. It is also not in dispute that on completion of the investigation into the case lodged by the

A appellants under Section 406 read with Sections 3 and 4 of
 Dowry Prohibition Act, a charge sheet under Section 173
 Cr.P.C. has already been filed before the Court competent to
 try the said offences in which the respondents have been
 released on regular bail on a sum of rupees ten thousand with
 B one surety of the like amount. The filing of the charge sheet,
 however, being an event subsequent to the taking of cognizance
 by the Metropolitan Magistrate on the complaint filed by the
 respondent-complainant, the same can have no relevance for
 determining whether cognizance was properly taken. The
 C question all the same would be whether the grant of anticipatory
 bail to the respondent by the Additional Sessions Judge,
 Karkardooma Court, Delhi, would constitute judicial
 proceedings and, if so, whether the offence allegedly committed
 by the appellants could be said to have been committed in
 D relation to any such proceedings.

9. The question whether grant of bail would attract the bar
 contained in Section 195(1)(b)(i) Cr.P.C. is no longer *res*
integra. In *Badri v. State* [ILR (1963) 2 All 359] an offence
 punishable under Section 211 IPC was alleged to have been
 E committed by the person making a false report against the
 complainant and others to the police. It was held that the said
 offence was committed in relation to the remand proceedings
 and the bail proceedings which were subsequently taken before
 the Magistrate in connection with that report to the police and,
 F therefore, the case was governed by Section 195(1)(b) Cr.P.C.
 and no cognizance could be taken except on a complaint by
 the Magistrate under Section 195 read with Section 340 of the
 Cr.P.C. The said decision came up for consideration before a
 three-Judge Bench of this Court in *M.L. Sethi v. R.P. Kapur*
 G [AIR 1967 SC 528], but this Court left open the question
 whether remand and bail proceedings before a Magistrate
 would constitute proceedings in a Court. This Court observed:

H "We do not consider it necessary to express any opinion
 whether the remand and bail proceedings before the
 Magistrate could be held to be proceedings in a Court, nor

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need we consider the question whether the charge of making of the false report could be rightly held to be in relation to those proceedings. That aspect need not detain us, because, in the case before us, the facts are different.”

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10. The legal position regarding maintainability of a complaint under Section 211 IPC by reference to a false complaint lodged before the police was nevertheless stated in the following words:

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“Consequently, until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police no question can arise of the Magistrate having the power of filing a complaint under Section 195(1)(b), Cr.P.C. In such circumstances, if a private person, aggrieved by the information given to the police, files a complaint for commission of an offence under Section 211, IPC, at any stage before a judicial order has been made by a Magistrate, there can be no question, on the date on which cognizance of that complaint is taken by the Court, of the provisions of Section 195(1)(b) being attracted, because, on that date, there would be no proceeding in any Court in existence in relation to which Section 211, IPC can be said to have been committed. The mere fact that on a report being made to the police of a cognizable offence, the proceedings must, at some later stage, and in a judicial order by a Magistrate, cannot therefore, stand in the way of a private complaint being filed and of cognizance being taken by the Court on its basis.”

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11. The question regarding bail proceedings before the Court being proceedings in a Court within the meaning of Section 195(1)(b)(i) once again fell for consideration before this Court in *Kamlapati Trivedi v. State of West Bengal* [1980 (2) SCC 91]. Kamlapati Trivedi had in that case filed a complaint under Sections 147, 448 and 379 IPC against six persons including one Satya Narayan Pathak. Warrants were issued for

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A the arrest of the accused, all of whom surrendered before the
Court of Sub-Divisional Judicial Magistrate, Howrah, who
passed an order releasing them on bail. In due course the
police completed the investigation and submitted a final report
under Section 173 Cr.P.C. stating that the complaint filed by
B Shri Trivedi was false. The Magistrate agreed with the report
and passed an order discharging the accused. Sometime after
the discharge order made by the Magistrate, Mr. Pathak, who
was one of the accused persons of committing the offence, filed
a complaint before the SDJM accusing Kamalapati Trivedi of
C the commission of offences punishable under Sections 211 and
182 IPC by reasons of the latter having lodged with the police
a false complaint. Trivedi filed a petition before the High Court
praying for quashing of the proceedings before the Magistrate
in view of the bar contained in Section 195(1)(b)(i) of the Code.
D That prayer was declined by the High Court who took the view
that criminal proceedings before the Court became a criminal
proceeding only when cognizance was taken and not before
and since no proceeding was pending before the Court, the
provisions of Section 195(1)(b)(i) were not attracted. In appeal,
E this Court formulated the following two questions:

“33. The points requiring determination therefore are:

“(a) Whether the SDJM acted as a Court when he
passed the orders dated May 6, 1970 and July 31, 1970
F or any of them?

(b) If the answer to question (a) is in the affirmative,
whether the offence under Section 211 of the Indian Penal
Code attributed to Trivedi could be regarded as having
been committed in relation to the proceedings culminating
G in either or both of the said orders?”

12. Answering the questions in the affirmative this Court
observed:

H “60. As the order releasing Trivedi on bail and the one

ultimately discharging him of the offence complained of amount to proceedings before a Court, all that remains to be seen is whether the offence under Section 211 of the Indian Penal Code which is the subject-matter of the complaint against Trivedi can be said to have been committed "in relation to" those proceedings. Both the orders resulted directly from the information lodged by Trivedi with the police against Pathak and in this situation there is no getting out of the conclusion that the said offence must be regarded as one committed in relation to those proceedings. This requirement of clause (b) aforementioned is also therefore fully satisfied.

61. For the reasons stated, I hold that the complaint against Trivedi is in respect of an offence alleged to have been committed, in relation to a proceeding in Court and that in taking cognizance of it the SDJM acted in contravention of the bar contained in the said clause (b), as there was no complaint in writing either of the SDJM or of a superior Court. In the result, therefore, I accept the appeal and, setting aside the order of the High Court, quash the proceedings taken by the SDJM against Trivedi."

13. The above view was reiterated by this Court in *State of Maharashtra v. SK. Bannu and Shankar* [(1980) 4 SCC 286]. The question in that case was whether prosecution for an offence punishable under Section 476 IPC could be lodged at the instance of a transferee Court in a case where the offence was committed in the other Court which was earlier dealing with a different stage of the said proceedings. Answering the question in the affirmative this Court held that the two proceedings namely one in which the offence was committed and the other in which the final order is made are, in substance, different stages of the same integrated judicial process and that the offence committed in the earlier of the said proceedings can be said to be an offence committed in relation to the proceedings before the Court to whom the case was

A subsequently transferred or the Court which finally tried the case. It was further held that bail proceedings before the Magistrate were judicial proceedings even though such proceedings had taken place at a stage when the offence against the accused, who were bailed out, was under police
B investigation. This Court observed:-

“16.....This being the real position, the bail proceedings before Shri Deshpande, and the subsequent proceedings before Shri Karandikar commencing with the presentation of the challan by the police for the prosecution of Deolal Kishan, could not be viewed as distinct and different proceedings but as stages in and parts of the same judicial process. Neither the time-lag between the order of bail and the challan, nor the fact that on presentation of the challan, the case was not marked to Shri Deshpande but was transferred under Section 192 of the Code, to Shri Karandikar, would make any difference to the earlier and subsequent proceedings being parts or stages of the same integral whole. Indeed, the commission of the offences under Sections 205, 419, 465, 467 and 471 of the Penal Code, came to light only when Shri Karandikar, on the basis of the forged surety bond in question, attempted to procure the attendance of the accused. If the earlier proceedings before Shri Deshpande and the subsequent proceedings before Shri Karandikar were stages in or parts of the one and the same process — as we hold they were — then it logically follows that the aforesaid offences could be said to have been committed “in or in relation to” the proceedings in the Court of Shri Karandikar, also, for the purpose of taking action under Section 476 of the Code.

21. In the instant case, it cannot be disputed that the bail proceedings before Shri Deshpande were judicial proceedings before a court, although such proceedings took place at a stage when the offence against the accused, who was bailed out, was
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under police investigation. Thus, the facts in *Nirmaljit Singh* case (1973) 3 SCC 753 were materially different. The ratio of that decision, therefore, has no application to the case before us.

14. Applying the above principles to the case at hand, there is no gainsaying that the bail proceedings conducted by the Court of Additional Sessions Judge, Karkardooma, Delhi, in connection with the case which the appellants had lodged with CAW Cell were judicial proceedings and the offence punishable under Section 211 IPC alleged to have been committed by the appellants related to the said proceedings. Such being the case the bar contained in Section 195 of the Cr.P.C. was clearly attracted to the complaint filed by the respondent. The Metropolitan Magistrate and the High Court had both failed to notice the decision of this Court in *Kamlapati Trivedi's and SK. Bannu's* cases (supra) and thereby fallen in error in holding that the complaint filed by the respondent was maintainable. The High Court appears to have also failed to appreciate that the real question that fell for consideration before it was whether the bail proceedings were tantamount to judicial proceedings. That question had been left open by this Court in *M.L Sethi's* case (supra) but was squarely answered in *Kamalapati Trivedi's* case (supra). Once it is held that bail proceedings amounted to judicial proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape from the conclusion that any offence punishable under Section 211 IPC could be taken cognizance of only at the instance of the Court in relation to whose proceedings the same was committed or who finally dealt with that case.

15. As noticed above, a charge-sheet has already been filed against the respondent by the CAW Cell before the Competent Court. The respondent would, therefore, have a right to move the said Court for filing a complaint against the appellants for an offence punishable under Section 211 IPC or

A any other offence committed in or in relation to the said proceedings at the appropriate stage. It goes without saying that if an application is indeed made by the respondent to the Court concerned, it is expected to pass appropriate orders on the same having regard to the provisions of Section 340 of the Code. So long as the said proceedings are pending before the competent Court it would neither be just nor proper nor even legally permissible to allow parallel proceedings for prosecution of the appellants for the alleged commission of offence punishable under Section 211 IPC.

C 16. It was next argued by learned counsel for the respondent that while an offence under Section 211 IPC cannot be taken cognizance of, there was no room for interfering with the proceedings in so far as the same related to the commission of an offence punishable under Section 500, since the bar of Section 195 Cr.P.C. was not attracted to the proceedings under Section 500 IPC. The argument though attractive does not stand closer scrutiny. The substance of the case set up by the respondent is that the allegations made in the complaint lodged with CAW Cell accusing him of an offence punishable under Section 406 and Sections 3 and 4 of the Dowry Prohibition Act were false which according to the respondent tantamounts to commission of an offence punishable under Section 211 IPC apart from an offence punishable under Section 500 IPC. The factual matrix for both the offences is however one and the same. Allowing the respondents to continue with the prosecution against the appellants for the offence punishable under Section 500 IPC would not, in our opinion, subserve the ends of justice and may result in the appellants getting vexed twice on the same facts.

E We are doubtless conscious of the fact that any complaint under Section 500 IPC may become time barred if the complaint already lodged is quashed. That is not an insurmountable difficult; and can be taken care of by moulding the relief suitably. It would, in our opinion, be appropriate if the orders passed by the Metropolitan Magistrate and that passed by the High Court

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are set aside and the complaint filed by the respondent directed to be transferred to the Court dealing with the charge sheet filed against the respondent. The said court shall treat the complaint as an application for filing of a complaint under Section 211 of the IPC to be considered and disposed of at the final conclusion of the trial; having regard to the provisions of Section 340 of IPC and the finding regarding guilt or innocence of the respondent as the case may be recorded against him. The respondent shall also have the liberty to proceed with the complaint in so far as the same relates to commission of the offence punishable under Section 500 of the IPC depending upon whether there is any room for doing so in the light of the findings which the court may record at the conclusion of the trial against the respondent.

17. In the result, these appeals are allowed, and order dated 3rd February, 2003 passed by the Metropolitan Magistrate and that passed by the High Court dated 26th February, 2008 are quashed. Crl. complaint No.180/1 of 2002 filed by the respondent shall stand transferred to the Court of competent jurisdiction seized of the charge-sheet filed against the respondents, for such orders as the Court may deem fit at the conclusion of the trial of the respondent having regard to the observations made above.

D.G.

Appeals allowed.