

Reserved on : 04.03.2026
Pronounced on : 12.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.9524 OF 2025

BETWEEN:

MR. SYED SHOAIB,
S/O LATE SYED SIRAJ,
AGED ABOUT 38 YEARS,
R/AT NO.175, 5TH MAIN,
9TH CROSS, 1ST STAGE,
WHITE APARTMENT,
HBR LAYOUT, BENGALURU.

(NOW IN JUDICIAL CUSTODY,
CENTRAL PRISON, BANGALORE)

... PETITIONER

(BY SRI HASHMATH PASHA, SR.ADVOCATE A/W
SRI KARIAPPA N.A., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA BY
KADUGONDANAHALLI POLICE STATION,
BENGALURU CITY.
- 2 . CHIEF SUPERINTENDENT,
CENTRAL PRISON,
PARAPANA AGRAHARA,



BENGALURU – 560 001

BOTH ARE REPRESENTED BY
LEARNED STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

3 . XXXXX
XXXXX
XXXXX
XXXXX

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1 AND R-2;
SRI S.B.SAJJAN, ADVOCATE FOR R-3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, PRAYING TO A. QUASH THE FIR IN CR.NO.202/2025 OF KADUGONDANAHALLI P.S. BANGALORE CITY AND ITS FURTHER PROCEEDINGS FOR OFFENCES U/S. 506, 34, 504, 376, 323, 420, 313, 417 OF IPC, WHICH IS PENDING ON THE FILE OF HON'BLE X ADDL. CJM, BANGALORE AS PER ANNEXURE-A, B AND C AS AN ABUSE OR PROCESS OF LAW, AND; B. TO QUASH THE ARREST AND REMAND ORDER DATED 03.06.2025 EFFECTED AND PASSED IN CRIME NO.202/2025 OF KADUGONDANAHALLI P.S. BANGALORE CITY FOR OFFENCES U/S. 506, 34, 504, 376, 323, 420, 313, 417 OF IPC, WHICH IS PENDING ON THE FILE OF HON'BLE X ADDL. CJM, BANGALORE AS PER ANNEXURE-B, AND C AS ILLEGAL, AND VITIATED AND CONSEQUENTLY TO RELEASE HIM FROM JUDICIAL CUSTODY WITH A FURTHER DIRECTION TO RESPONDENT NO.2 TO RELEASE THE PETITIONER FORTHWITH.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, sole accused, is before the Court calling in question proceedings in Crime No.202 of 2025 registered for offences punishable under Sections 506, 34, 504, 376, 323, 420, 313 and 417 of the IPC.

2. Heard Sri Hashmath Pasha, learned counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for respondents 1 and 2 and Sri S.B. Sajjan, learned counsel appearing for respondent No.3.

3. Facts in brief, germane, are as follows: -

The 3rd respondent is the complainant. The 3rd respondent works at a dance club where she was performing dance shows from the year 2017. The petitioner and the 3rd respondent developed friendship, friendship blossomed into relationship and the relationship into sexual as well. Long thereafter, the 3rd respondent

on 26-05-2025 alleging that she had endured the relationship for over 10 years registered a complaint. The police did not, at the outset, register the crime, as according to the jurisdictional Police the complaint did not disclose a cognizable offence. This led the complainant to file Writ Petition No.15440 of 2025 before this Court seeking a direction for registration of crime. On 02-06-2025 the State submitted before the Court that it would register a FIR. On 02-06-2025 comes the second complaint of the 3rd respondent/victim. This becomes a crime in Crime No.202 of 2025 for the afore-quoted offences. The petitioner, on registration of crime, is said to have been detained by the Police and the writ petition comes to be disposed of on account of the crime being registered by the jurisdictional police. Aggrieved by the registration of crime in Crime No.202 of 2025 the petitioner is before this Court in the subject petition seeking obliteration of the crime.

4. The learned senior counsel Sri Hashmath Pasha appearing for the petitioner would contend that the offence under Section 376 of the IPC cannot be remotely made out in the case at hand, as the victim was 30 years old at the time of registration of the crime and

the relationship between the two, consensual, was for over 10 years. The complainant is said to have conceived twice and on her own volition taken medication to abort the pregnancy. The learned senior counsel submits that the 3rd respondent decided to marry the petitioner against her parents' wish and voluntarily decided to convert to Islam and now contends that it was a fake marriage. The relationship was a live-in relationship between the two and all acts were consensual. He would seek to contend that the complainant would be having an affair with another person or multiple persons, as the case would be.

5. Per contra, the learned counsel appearing for the 3rd respondent/complainant would vehemently refute the submissions in contending that the matter is at the stage of investigation. There are seriously disputed questions of fact in the case at hand. The relationship though was for a long time, the complainant has been forced for conversion and marriage is also performed. The learned counsel submits that proceedings must not be quashed but has to await the filing of the final report by the Police.

6. The learned Additional State Public Prosecutor Sri B.N. Jagadeesha appearing for the State would submit that the grounds of arrest are indeed furnished to the petitioner prior to his detention. Therefore, it is in compliance with law. He would submit that the case at hand does not stop at mere consensual relationship, but has certain overtones which require investigation in the case. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts and link in the chain of events are all a matter of record. The complainant from 2017 works in a dance bar which is frequented by the petitioner. The petitioner and the complainant developed relationship. On the pretext of promise of marriage, the petitioner has had several years of sexual relationship with the complainant. The relationship is said to have given way for the complainant to convert herself to Islam from being a Hindu. Years passed by and the complainant seeks to register a crime on

02-06-2025. Since the entire issue has now triggered from the complaint, I deem it appropriate to notice the complaint. The complaint is in great detail and reads as follows:

To,

The Police Inspector
Kadugondanahalli
Bengaluru city

Complainant Name

XXXXXX
XXXXXX
XXXXXX
XXXXXX

Respected Sir.

Sub:- Complaint against Syed Shoaib, SHameem
Tag, SHafia Tabassum SHAZia, yousuff
Totally 5 persons. xxxx

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1. The petitioner first met Shoaib in July 2017 and was eventually coerced into a relationship with him, which led to her conversion to Islam under duress and false promises of marriage.

2. 2017 to Last Week Continuous Rape, Cheating, Fraud, forcefull Conversion, Financial Exploitation, Insolvent In Relationship, Involment Fake Ceremony, Threatinig To Kill, To Take Away My Life And Threatinig To Broadcast My Naked Vedio In the Social Media And Also Snaching Away Gold And Jewallaries And Assult And Causing Miss Carriage By the Accused And Also Involment whole Family In Miss Carriage And Also Providing Contraceptive Pills in Aiding Medical Termination Off Pregnancy Twice Which Has Detoriated Her Gynococalical Health Of Reproduction in Future She Cannot Concive, Produce

Any Child Which Has been Declared by the Doctor. Hence Its Prayed Before This Authority Register And Crime Involving The All Accused Mention Above by the Accused Shoaib And Involvement of Mother Of Shoaib, Shameen Taj, Sister Shafia Tabasum And Shajiya, Shafia And Uncle Yusuf.

3.The petitioner was subjected to a fake marriage ceremony, financial exploitation, and physical and mental abuse by Shoaib, who also threatened her with the release of private videos.

4.Despite multiple instances of violence and exploitation, the petitioner was unable to seek help due to Shoaib's connections with local police officers, politicians, and goons.

5.The petitioner has been diagnosed with thyroid issues and has been mentally, physically, emotionally, and financially drained by the actions of Shoaib.

#### 6.Initial Meeting and Relationship Development

I first met Shoaib in July 2017 at a friend's birthday party where we exchanged numbers. Shoaib began following me persistently, expressing his love.

- On October 10, 2017, he proposed to me. We began a relationship, with Shoaib introducing me as his partner and promising marriage.

#### 7. **\*\*Conversion and Betrayal:\*\***

- In 2018, I converted to Islam under pressure, only to find Shoaib was already married.

Despite this, I continued the relationship under threats and coercion.

#### 8. **\*\*Fake Marriage and Financial Exploitation:\*\***

- In February 2019, Shoaib conducted a fake marriage ceremony. I discovered it was take months later.

I. xxxxx, a Hindu woman from a Punjabi family, am writing this complaint seeking urgent intervention and protection from the police department. I have been subjected to systematic exploitation, fraud, rape, and domestic violence by one Shoaib for nearly 10 years. I request immediate action and protection as I fear for my life and safety.

### **9. Initial Meeting and Relationship Development**

I first met Shoaib in July 2017 at a friend's birthday party where we exchanged numbers. At that time, I was staying in a PG in Bangalore. After our initial meeting, Shoaib began following me persistently around my area, desperately expressing his love for me. Though I was not convinced initially, his persistent pursuit continued.

On October 10, 2017, my birthday, he proposed to me, and I was somehow happy about it. That day marked our first physical relationship and the beginning of what I thought would be a beautiful future together.

Our relationship progressed seriously over the next few months, with Shoaib confidently introducing me everywhere as his partner and promising marriage. I trusted him completely and was deeply in love. However, the religious difference between us became a significant concern as I was from a Hindu family and he was Muslim. For us to marry, I needed to convert to Islam.

### **10. Conversion and Betrayal**

In 2018, I was extremely skeptical about leaving my Hindu roots and converting to Islam. I definitely did not want to do it, but I had already fallen deeply in love with this man who had promised marriage and with whom I had established physical relations. My family was evidently unhappy with my decision.

When my parents began looking for a Hindu Punjabi alliance for me, I traveled to Punjab to make it clear that I would only marry Shoaib. Due to my adamant stance, my family disowned me completely, telling me never to contact them again. Heartbroken but determined, I returned to Bangalore and converted to Islam.

One month after my conversion, I was shocked to discover that Shoaib was already married with two children. This led to a huge fight between us, but he convinced me that Islamic law permits multiple marriages and that he would take care of me as his second wife. Against my better judgment, I continued the relationship.

He then forcefully enrolled me in a Madarasa in Frazer Town to study Islamic scriptures. At this point of time, I even decided that I was done and tried to move away from him, but then he threatened me with some private videos of us sharing intimate moments where I had barely anything on. He threatened to release those videos on the internet. I was scared and trapped back with this man.

### **11. Fake Marriage and Financial Exploitation**

In February 2019, Shoaib announced he was ready to marry me. A ceremony was conducted with only his friends present as witnesses, neither his family nor mine having any knowledge of it. He provided me with documents claiming they were our marriage certificate. Being unfamiliar with Islamic marriage rituals, I believed the ceremony was legitimate. Only months later did his friends confess that the entire ceremony was fake and that we were never legally married.

After this fake marriage, Shoaib moved me to another PG and took me to Goa for what I thought was our honeymoon. Upon return, he began eyeing my savings and regularly asking for money. Though I was earning and managing my own expenses, I lent him money believing he needed it for emergencies.

### **12. Living Arrangements and Property Fraud**

In 2020, Shoaib rented a flat for me in HBR Layout - Primehood Residency M-402. I stayed in this rental house for 3 years (2020-2023) paying 15,000 rent plus 3,000 maintenance, while Shoaib only contributed 10,000 of this amount. During my stay here, Shoaib demanded my gold jewelry, worth 10-12 lakhs including 2 bangles, one chain, earrings, and a bracelet, the last remaining gifts from my parents. He claimed he would keep it safe in a bank locker and would use the money from selling these items to purchase a property under my name. However,

my jewelry has never been returned to me and remains in his custody.

During the 2020 lockdown, I became pregnant, but Shoaib was unhappy and forced me to abort using pills. This period also revealed his gambling addiction and that he was using my money for this purpose. When I confronted him, his aggressive side emerged through frequent fights.

In 2021, when I refused to give him more money and asked for my money back, Shoaib violently assaulted me. He began forcing me to provide money and even demanded I contact my estranged family for funds. Though I desperately wanted to approach the police, I was mentally weakened and feared his connections with local police officers, politicians, and goons who frequently visited him.

In 2022, I became pregnant again, and once more, Shoaib forced me to abort. By this time, his entire family knew about our relationship, as did our colony and building residents. While his family accepted and loved me, Shoaib made my life miserable. He spent more time with me than with his wife and children but never allowed me to interact with them properly.

To control the escalating situation, Shoaib proposed selling me a property in his building, currently in his mother's name. We agreed I would pay half the price, and he would pay the other half. However, after I paid my share, he began making excuses and extracted more money from me. He started using my debit card without permission, withdrawing money for his purposes. Eventually, I had paid the amount of 60-70 lakhs, but the property was never transferred to my name. During this time, he also took more of my family jewelry.

In 2023, I moved into a new place - Grace Home Address: D/o Madan Lal Verma, No 202 Grace Home 2, 2nd Floor, Swamy Narayana Clinic Road, 3rd Main Road HBR Layout, Bangalore North, PO: Kalyananagar, DIST: Bengaluru, Karnataka, 560043. I paid for this accommodation entirely.

I discovered he had created a fake Aadhar card with his first wife's name but my photo and details, which confirmed the marriage was indeed fake.

I also moved into the flat that I had paid for and spent an additional 10 lakhs on renovation, yet the property remained in his mother's name. When he brought a lease document for me to sign, I questioned why this was necessary since I had paid the full amount. He claimed difficulties in transferring the property due to my documents still bearing my original name.

### **13. Deterioration and Threats**

When I asked for marriage documents to change my name officially, he avoided the topic. I confronted him, saying we could have a proper marriage ceremony now since his family already accepted me. He threatened that if I forced him to marry me, he would throw me out on the streets as the property wasn't legally mine.

Throughout 2024, the situation deteriorated drastically. Fights increased as I demanded marriage while he continued using me for physical relations, often forcefully tearing my clothes and assaulting me when I resisted. His mother and sister would comfort me, promising they would convince him to marry me, but this was merely to silence me temporarily.

In 2025, the final straw came when his sister admitted that all their comforting words were just to calm me down and that Shoaib would never marry me. When I confronted him again, he directly threatened me, saying I could never go to the police due to his connections and had nowhere to escape.

### **14. Health Impact and Current Situation**

By this point, he has drained me mentally, physically, emotionally, and financially. I've been diagnosed with thyroid issues, and doctors have informed me that my chances of natural conception have diminished significantly. I've even started IVF procedures in desperation, hoping a child might change his behavior, but he continues to prevent any opportunity for me to become a mother.

After enduring nearly 10 years of abuse, sexual exploitation, financial fraud, and mental torture, I am on the verge of suicide. I have lost everything - my family, my finances, my health, and my dreams of motherhood - all for a man who treats me as

nothing more than a mistress. I have finally decided to fight for my rights and seek justice.

## **FOUNDATIONS**

### **Rape (Section 375 IPC)**

**Fake Marriage/Deception:** xxxxx states Shoaib conducted a fake marriage ceremony" and she "believed the ceremony was legitimate." If she consented to sexual intercourse under the mistaken belief that they were lawfully married, and this belief was induced by Shoaib's deception, it could constitute rape under Explanation 2 of Section 375 IPC.

**Continued relationship under threat and coercion:** xxxxx explicitly states, "I continued the relationship under threats and coercion." She also mentions, "he threatened me with some private videos of us sharing intimate moments where I had barely anything on. He threatened to release those videos on the internet. I was scared and trapped back with this man." This indicates that her consent to sexual acts after this point may not have been free and voluntary, potentially falling under Section 375 (forcible or against her will).

**Forceful Physical Relations (2024):** xxxxx explicitly states, "he continued using me for physical relations, often forcefully tearing my clothes and assaulting me when I resisted." This is a clear instance of rape.

### **Cheating (Section 415/420 IPC):**

**Fake Marriage:** Shoaib induced xxxxx to believe they were married, leading her to part with her body and potentially other valuable things (money, consent to live with him, etc.) based on this false representation.

**Property Fraud:** Shoaib induced xxxxx to pay 60-70 lakhs for a property that was never transferred to her name, and he extracted more money under false pretenses. This is a clear case of cheating.

**Gold Jewelry:** He took her gold jewelry (worth 10-12 lakhs) under the pretext of keeping it safe and buying property, but never returned it or used it for the stated purpose. This also constitutes cheating and possibly criminal breach of trust.

**Financial Exploitation:** Regularly asking for and receiving money, using her debit card without permission, and using her money for gambling, all under false promises or implied trust

**Criminal Breach of Trust (Section 405/406 IPC):**

**Gold Jewelry.** xxxxx entrusted her jewelry to Shoaib for safekeeping and specific use (buying property), but he dishonestly misappropriated it or converted it to his own use.

**Property Funds:** xxxxx entrusted money to Shoaib for the specific purpose of purchasing a property in her name, but he dishonestly misappropriated those funds.

**Voluntarily Causing Hurt/Grievous Hurt (Sections 323/325 IPC):**

**Violent Assault (2021):** "Shoaib violently assaulted me."  
**Assault during resistance (2024):** "often forcefully tearing my clothes and assaulting me when I resisted."

**Criminal Intimidation (Section 503/506 IPC)**

**Threats of releasing private videos:** "he threatened me with some private videos... to release those videos on the internet." This clearly caused alarm to xxxxx.

**Threats of throwing her out:** "if I forced him to marry me, he would throw me out on the streets.

**Threats regarding police connections:** "you could never go to the police due to his connections and had nowhere to escape."

**Causing Miscarriage without Woman's Consent (Section 313 IPC)**

xxxxx states she "became pregnant, but Shoaib was unhappy and forced me to abort using pills" in 2020 and "In 2022, I became pregnant again, and once more, Shoaib forced me to abort." If these abortions were performed without her free and informed consent, and were instead compelled by force, threats, or undue influence, it could fall under this section. Even if she took the pills herself, if her will was overborne, it's a crime.

While their marriage was fake, the PWDVA covers women in a "domestic relationship," which includes a relationship in the nature of marriage. Given the long-term cohabitation, public representation as a couple, and the promise of marriage, xxxxx may be able to seek relief under this Act for

**Physical Abuse: Assaults, forceful physical relations.**

**Sexual Abuse: Forced abortions, forced physical relations.**

**Emotional/Verbal Abuse: Threats, coercion, mental torture, betrayal** **Economic Abuse: Financial exploitation, taking money, jewelry, property fraud, preventing her from becoming a mother (which has economic implications for her future).**

**Protection Orders: To prevent Shoaib from contacting or threatening her. Residence Orders: To secure her right to reside in a shared household (though complicated by the property not being in her name**

**Monetary Relief: Compensation for expenses incurred, loss of earnings, and damages for injuries. Harassment/Mental Cruelty: The sustained period emotional manipulation, threats, betrayal, and financial distress clearly constitutes mental cruelty. Conversion: The fact of her conversion under pressure and then discovering his existing marriage is a significant element demonstrating deception and coercion Vulnerability: Her isolation from her family, financial dependence (due to**

**exploitation), and emotional manipulation made her highly vulnerable, which Shoaib exploited.**

**Duration of Abuse: The "nearly 10 years" of systematic exploitation strengthens the case for a pattern of abuse.**

**Kindly register the case against the accused Persons as per the IPC or BNS or any other laws, and immediately arrest accused persons.**

Thanking you,

Your's Faithfully  
Sd/-  
(sic)

The complaint does not stop at one instance. It records allegations year-wise and overt acts right from the initial meet and development of relationship. The complaint narrates regarding marriage, financial exploitation and threatening of the complainant. The complaint did not result in registration of the crime though it did make a cognizable offence. This led the complainant to approach this Court seeking registration of a crime and impounding of passport of the petitioner. The learned High Court Government Pleader in Writ Petition No.15440 of 2025 submitted that the Police have now registered the crime in Crime No.202 of 2025 – the impugned crime. It is then the said writ petition comes to be closed. The issue now would be, whether on the plea of projected

consensual acts this Court should interfere and obliterate the proceedings as against the petitioner, is what is required to be considered.

9. The complaint is quoted *supra* in its entirety. The complaint makes out a clear case of exploitation of the complainant by the petitioner. Abortion twice on account of the relationship and several other factors would require investigation in the least. Though in the first blush the submission of the learned senior counsel would become acceptable that it was consensual relationship, but on a deeper delving into the matter, what has unmistakably emerged is that several criminal acts shrouded with consensual relationship that would require investigation. Therefore, investigation cannot be scuttled and if interfered in seriously disputed questions of fact, it would run foul of judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**<sup>1</sup>, wherein it has been held as follows:

“ .... .... ”

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<sup>1</sup> (2021) 9 SCC 35

**"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance.** From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. **If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.** Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring

no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar* [*Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in *Arvind Khanna* [*CBI v. Arvind Khanna*, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , *Managipet* [*State of Telangana v. Managipet*, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in *XYZ* [*XYZ v. State of Gujarat*, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which

have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can

be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

**12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.**

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and

the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed.”

(Emphasis supplied)

10. It becomes germane to notice that a FIR cannot be an encyclopedia of offences. It is only a first information. There are scores and scores of cases where this Court has obliterated the proceedings at the stage of crime itself. That would be owing to the peculiarity of facts projected in each of the cases. In the case at hand, the facts narrated would require investigation.

11. Finding no merit in the petition, the petition stands ***dismissed***. Interim order if any subsisting shall stand dissolved.

Pending application if any, also stands disposed, as a consequence.

**Sd/-**  
**(M.NAGAPRASANNA)**  
**JUDGE**

bkp  
CT:MJ