

(BY SMT.K.P.YASHODHA, HCGP FOR R1, R2 AND R3;
SRI VIVEK REDDY, SR. ADVOCATE A/W
SRI K.G.KAMATH, ADVOCATE FOR R5 (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE FIR IN CRIME CR NO.0216/2021 REGISTERED BY THE RESPONDENT HENNUR POLICE STATION PENDING ADJUDICATION BEFORE THE 4TH ADDITIONAL CHIEF METROPOLITAN MAGISTRATE COURT, BANGALORE BASED ON THE COMPLAINT FILED BY THE R-5 COMPLAINANT SYED ALI HINDUSTANI ALLEGING THAT THE PETITIONERS HAS COMMITTED OFFENCES INTER ALIA UNDER SECTIONS 506, 380, 384, 389, 406, 419, 420 READ WITH SECTION 34 OF THE INDIAN PENAL CODE 1860 AS PER ANNEX-A AND B AND ALL STEPS TAKEN THEREAFTER AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.04.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners being aggrieved by the proceedings in Crime No.216 of 2021 registered for offences punishable under Sections 406, 419, 420, 380, 384, 389, 506 read with Section 34 of the IPC and pending before the IV Additional Chief Metropolitan Magistrate, Bangalore have approached this Court

under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code. The petitioners who are daughter and mother respectively are accused Nos. 1 and 2 in the said crime.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings are as follows:-

The 1st petitioner is the wife of 5th respondent/complainant. Through a website named Elite Matrimony the 1st petitioner and the 5th respondent got married on 06-06-2021. On 09-06-2021 the wife/1st petitioner travels to the matrimonial house at Hyderabad. It is alleged that from 12-06-2021 the wife was tortured by the husband/5th respondent barely five days after marriage. On 11-07-2021 the wife flies to her ancestral house at Kolkata. On 17-07-2021 the complainant and his parents appear to have travelled to Kolkata to persuade the 1st petitioner to come back to Bangalore. Not acceding to the request, both the petitioners flew to London, United Kingdom. On 14-11-2021 the petitioners returned to

Kolkata for seeking annulment of marriage. By then, the 5th respondent/husband had registered the complaint before the Police at Bangalore on 11-11-2021. Based on the crime so registered in Crime No.216 of 2021 for the aforesaid offences, the respondent/police sought to arrest the 1st petitioner. On 19-11-2021 a transit bail was sought and granted to the petitioners by the Court at Kolkata. After the grant of such transit bail, the petitioners come to the City of Bangalore and filed the subject petition on 23-12-2021 seeking annulment of proceedings in Crime No.216 of 2021.

3. The complainant alleges in the complaint that the 1st petitioner after marriage had taken all the jewellery of his mother stating that she requires them for a photo shoot as she liked ethnic Indian jewels and had not returned the same. Further allegation is that an amount of Rs.7.5 crores was transferred to the account of the 1st petitioner as on deceit she has induced the 5th respondent to shell out with the money on the ground that a property is being purchased in their joint

names. The complainant also alleges that the petitioners were not even Muslims and have posed themselves as Muslims but they were in fact Christians. On the said complaint, crime in Crime No.216 of 2021 is registered. The moment crime is registered the petitioners have knocked the doors of this Court in the subject petition.

4. Heard Sri S. Ajesh Kumar, learned counsel appearing for the petitioners, Smt. K.P.Yashoda, learned High Court Government appearing for respondents 1 to 3 and Sri Vivek Reddy, learned senior counsel appearing for the 5th respondent/complainant.

5. The learned counsel for the petitioners submits that a pure matrimonial dispute is sought to be given a colour of crime and also the dispute is purely civil in nature. The allegations made in the complaint, even if taken to be true, would not make out an offence against the petitioners. The allegation against the petitioners is that they have taken away the jewels belonging to the complainant and some money has been transferred from the

account of the complainant to the account of the 1st petitioner. These are during subsistence of marriage and, therefore, no criminality can be attached to any of the allegations made in the complaint. He would submit that there is no misappropriation of any funds as the property is registered in the names of both the 1st petitioner and the complainant. The learned counsel would further submit that none of the ingredients of Sections 406 and 420 of the IPC can even be made in the case at hand as there is no inducement for purchase of property by the 1st petitioner on the complainant and its dishonest misappropriation. He would further submit that there is no inducement inducing the complainant to part with any money with a dishonest intention and, therefore, seeks annulment of proceedings.

6. On the other hand, the learned senior counsel Sri Vivek Reddy, representing the 5th respondent, would vehemently refute the submissions to contend that the writ petition so filed is not even maintainable. Though it is a writ petition invoking Articles 226 and 227 of the Constitution of India read with Section 482

of the Cr.P.C., it is not maintainable, as it is filed by a power of attorney holder and not by the petitioners. He would submit that if the petition itself is not maintainable, none of the grounds urged in the petition can be looked at, as it operates as a threshold bar upon the petitioners to urge any of the contentions. Notwithstanding this, on merits of the matter, the learned senior counsel would further contend that the 1st petitioner lured or induced the complainant to part with all the jewels belonging to his mother on the pretext of a photo shoot and all the jewelry was handed over to the 1st petitioner who has admittedly not returned the same but carried to United Kingdom. In the same way, the 1st petitioner has induced the complainant to part with Rs.7.5 crores sitting in United Kingdom allegedly towards payment of purchase of apartment. The learned senior counsel would submit that the petitioners are guilty of suppression of facts while seeking an interim order at the hands of this Court and seeks dismissal of the petition on the aforesaid grounds.

7. 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 following points arise for my consideration:

- (i) Whether the subject writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. is maintainable at the hands of a power of attorney holder of an accused?**
- (ii) Whether the writ petition suffers from suppression of material facts entailing dismissal of the petition?**
- (iii) Whether in the facts of the case the offences alleged would meet their ingredients?**

8. Point No.(i):

Whether the subject writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. is maintainable at the hands of a power of attorney holder of an accused?

Since the issue with regard to whether the writ petition is maintainable or otherwise forms a threshold bar for entertaining the petition or considering any other submission, I deem it appropriate to notice and consider the said point first, as if the

power of this Court is uninvokable, the petition will have to be dismissed as not maintainable.

9. It is not in dispute that the petitioners are presently residing at United Kingdom and the petition is presented by one Mr. Gautam Giri on the strength of a power of attorney executed by the petitioners on 14-12-2021 at Bangalore. The power of attorney appended to the petition is executed at Bangalore, but signed by the executants before the Notary at London. There is no averment in the entire petition that the said power of attorney holder is aware of the facts of the case. There being no averment to the effect that the power of attorney holder has full knowledge of what is being filed and the reason for presenting the petition by the said power of attorney holder, notwithstanding the fact that it is filed invoking writ jurisdiction of this Court as an amalgam to Section 482 of the Cr.P.C., the writ petition would not become maintainable. The Constitutional Courts have consistently taken a view that the petition under Section 482 of the Cr.P.C. by a power of attorney holder is not maintainable.

10. The High Court of Delhi in a Judgment rendered in the case of **AMRINDER SINGH v. STATE OF NCT OF DELHI**¹ addresses the very issue as it was argued therein that the petition filed under Article 227 read with Section 482 of the Cr.P.C. was not maintainable. The High Court of Delhi following the judgment of the Apex Court in the case of **T.C.MATHAI AND ANOTHER v. THE DISTRICT & SESSIONS JUDGE, THIRUVANANTHAPURAM**², has held as follows:

“6. It is vehemently argued by the Ld. APP that the present petition under article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure is not maintainable as the same has been filed through S.P.A. holder and the present application and petition are liable to be dismissed.

7. In *Amit Ahuja Vs. Gian Parkash Bhambri*, MANU/PHYSICAL HEARING/1159/2010: 2010(3) R.C.R.(Criminal) 586; it has been observed as under:-

“9. The plain reading of the ratio of law, laid down, in the aforesaid cases, clearly goes to reveal, that it is only the accused person, against whom, a criminal case, has been registered or a criminal complaint, has been filed, can file a petition, under Section 482 Cr.P.C., in the High Court, for quashing the complaint, the summoning order, and the subsequent proceedings, and no third person,

¹ **CrL.M.C.1571 of 2021 decided on 04-01-2022**

² **AIR 1999 SC 1385**

can fight a proxy war, on his behalf, under the garb of public interest litigant. The aggrieved party, which is affected by an order, is required to seek redress of its grievance, by questioning the legal validity or correctness of the same. It is another thing, if the aggrieved party, is suffering from some disability i.e. unless such party is a minor, an insane person, or is suffering from any other disability, which, in law, is recognized as sufficient to permit any other person e.g. next friend, to move the Court, on his behalf. On behalf of minor, or insane person, a guardian or a next friend, initiates proceedings, so as to challenge the legality and validity of the order, passed against him, to seek redressal of the grievance, as under law, such a person having disability, cannot be said to be competent, to file a petition, except through next friend or guardian. In the instant case, there is nothing, on the record, that Amit Ahuja, petitioner, is suffering from any disability, recognized by the provisions of law. He is an accused, in the aforesaid complaint. It is he, who is aggrieved, against the complaint and the summoning order. It is he, who can challenge the same, on any ground which may be available to him, under the provisions of law. If, in criminal cases, until and unless, a person aggrieved, suffers from some disability, recognized by law, a stranger or some other person, is allowed, to fight the proxy war, then the very purpose of criminal justice system, shall be defeated. In that event, the Courts, would be mushroomed, by public interest litigants. In this view of the matter, the present petition, under Section 482 Cr.P.C., filed by the petitioner, through his attorney, is not maintainable. On this ground alone, the same is liable to be dismissed.”

“8. In *T.C. Mathai and another Vs. The District & Sessions Judge, Thiruvananthapuram, Kerala*, MANU/SC/0224/1999 SC 1385; in para 15, it is observed as under:-

“15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with “the personal attendance of the accused, and permit him to appear by his pleader” if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.”

9. In the instant case as well the petition has been filed through SPA holder which is per se not maintainable. Therefore no permission can be granted to the petitioner to file the present petition bearing No. CRL.M.C. 1571/2021 under article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 258/2010 and the charge-sheet and all the proceedings arising therefrom including the proceedings initiated against the petitioner u/s 82/83 of the Code of Criminal Procedure through his SPA holder. Therefore, I find no ground to accept the prayer made in the present application bearing No. Crl. M.A.10986/2021, the same is, therefore,

dismissed, consequently, the petition bearing No. CRL. M.C.1571/2021 is also dismissed. All pending applications (if any) are disposed of.”

(Emphasis supplied)

The High Court of Delhi clearly holds that the petition filed through Special Power of Attorney Holder is *per se* not maintainable. Therefore, no permission can be granted to the power of attorney holder to present the petition under Article 227 of the Constitution of India or otherwise. The challenge to the proceedings seeking annulment of FIR was also held not maintainable.

11. The High Court of Punjab and Haryana in **SARABJIT SINGH v. STATE OF PUNJAB AND OTHERS**³ again considering the fact whether the power of attorney holder could maintain the petition holds as follows:

“5. During the course of hearing, it is not disputed by learned counsel that the petitioner is still residing abroad and the petition has been filed through his mother, namely, Sukhwinder Kaur (Special power of attorney).”

7. When confronted with the maintainability of the petition, learned counsel has submitted that since the mother of the petitioner was also an accused, therefore, she is

³ CRM-M No.26957 of 2021 decided on 16-07-2021

competent to represent him as his special power of attorney to pursue his case relating to the same FIR.

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13. Though the above decision of the Hon'ble Supreme Court was not brought to the notice of this Court in Mangal Dass Gautam's case (*supra*), however, the above view was further followed by Bombay High Court in "Pravin Niwritti Sawant V.Nisha Pravin Sawant and another", MANU/MH1523/2007 : 2007 (4) RCR (Criminal) 841, and by Kerala High Court in "Naveed Akhthar v. State of Kerala".

14. At this juncture, the analysis of the facts of this case reveal that the petitioner voluntarily disengaged himself with the trial proceedings, who left the country without seeking any permission from the trial Court, therefore, this petition filed through the Special power of attorney holder is not maintainable. If such a procedure is introduced, then it would not only encourage the accused persons to seek this kind of permissions to avoid their personal presence before the trial Courts or any other Court, as required by law but would also put extra burden upon the Courts and it may further cause delay in conclusion of the criminal proceedings, thereby defeating the aim and object of the penal laws."

(Emphasis supplied)

The High Court of Punjab and Haryana answers the question whether the accused/respondent abroad can file a petition through the power of attorney holder. In the case before the said High Court, the power of attorney holder was the mother. It was argued that the petition was maintainable as the mother of the 1st petitioner was also an accused in the case and she was

competent to represent the other accused as she was the power of attorney holder, wherein it is held that if such a practice is permitted, it would become easy for the accused to run away from the country and avoid appearance before the Court thereby resulting in gross delay in the proceedings.

12. The High Court of Kerala in a Judgment rendered in the case of **NAVEED AKTHAR SAIT v. STATE OF KERALA**⁴ observes that the power of attorney holder moved the case on behalf of the accused. There was no petition for permission to act on behalf of the principal. An agent could not appoint an Advocate and therefore, holds that the very petition filed by a power of attorney holder was not maintainable and the Court holds as follows:

“6. Thus, what comes out is that as per the said power of attorney a petition is filed before this court on behalf of the original accused in the case referred above. The decision in M. Krishnammal v. T. Balasubramania Pillai (AIR 1937 Mad 937), which was decided by the Madras High Court, that also about 70 years back is the land mark decision in this regard. As per the said decision, the legal position regarding the power that can be delegated even in a case is dealt with. The court held:

⁴ **2016 SCC Online KER 13587**

“An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court --- There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney is confined only to pleaders, i.e, those who have a right o plead in courts.”

7. The dictum laid down therein is that without the explicit permission of the court, a power of attorney cannot plead or can have audience in the court. This position is followed in *T.C Mathai v. District & Sessions Judge, Thiruvananthapuram* [(1999) 3 SCC 614], wherein the Apex Court approving the dictum laid in the above referred case, held that:

“The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a “pleader” for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.”

8. In the case in hand, it is the admitted case of the petitioner that he is the power of attorney holder and moved on behalf of the accused. There is no petition for permission to act on behalf of the principal. An agent cannot appoint an Advocate who is empowered to appear before the court without the permission of the court. When the power of attorney holder has not permitted to do so, he cannot cure the defect by appointing an advocate by him. Thus, what comes out is that, in this case, the petitioner has not obtained permission from the court to proceed with the proceeding.”

All the decisions afore-quoted follow the judgment of the Apex Court in the case of **T.C.MATHAI** (*supra*), wherein the Apex Court holds as follows:

*“15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. **When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with “the personal attendance of the accused, and permit him to appear by his pleader” if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.**”*

(Emphasis supplied)

13. On a coalesce of the judgments so rendered by the Constitutional Courts, what can be unmistakably gathered is that the power of attorney holder of an accused cannot maintain

a petition be it under Article 226 or 227 of the Constitution of India read with Section 482 of the Cr.P.C. or Criminal Petition under Section 482 Cr.P.C. Therefore, I hold that the present petition filed by the power of attorney holder of the accused, without seeking any permission at the hands of this Court, and without even narrating in the petition that he is personally aware of the facts of the case, the writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. is *per se* not maintainable, as the accused cannot be represented by a power of attorney holder and thus, maintain the subject petition.

14. Point No.(ii):

Whether the writ petition suffers from suppression of material facts entailing dismissal of the petition?

A link in the chain of events *qua* their dates is required to be noticed while answering this point. The petitioners contend that on 23-07-2021 they flew back to London from Kolkata and

returned to Kolkata on 14-11-2021. By then, crime in Crime No.216 of 2021 had been registered by the Police at Bangalore on a complaint made by the 5th respondent/complainant. The petitioners, on the strength of the FIR, were apprehended on 19.11.2021 and produced before the competent Court at Kolkata. A transit bail was granted for travelling to Bangalore along with the police. Upon their production before the competent Court at Bangalore, they were released on bail on the condition that they surrender before the IV Additional Chief Metropolitan Magistrate within next 10 days and accordingly, they surrendered on 13-12-2021. Thereafter, the petitioners filed Criminal Miscellaneous No.1158 of 2021 seeking anticipatory bail under Section 438 of the Cr.P.C. The Court having observed that the petitioners were already arrested once and released on bail, dismissed the petition on 22-12-2021. The next day i.e., 23-12-2021 on dismissal of bail petition, the petitioners filed the subject writ petition. All these events and happenings from 19-11-2021 until the filing of the present petition on 23-12-2021 have been completely suppressed by the petitioners. This

suppression is not in dispute, as a rejoinder is filed by the petitioners to the statement of objections filed by the 5th respondent/complainant in which these facts so urged, are not rebutted.

15. On the other hand, in the said rejoinder the petitioners admit that the power of attorney was executed before a notary public in United Kingdom on 14-12-2021. It is also submitted that the petitioners had approved the draft on 11-12-2021. Therefore, the power of attorney being executed at Bangalore and notarized at United Kingdom is not in dispute. The petitioner No.1 has filed an affidavit of declaration which is dated 29-03-2022 for the first time stating that in view of travel restrictions due to COVID-19 the power of attorney was handed over to a family friend Mr.Gautam Giri and has also sought to defend the allegations made in the complaint. But there is no whisper about the afore-narrated facts and events that have been suppressed by the petitioners while filing the present

petition. Therefore, there can be no doubt that the petitioners are guilty of approaching this Court with unclean hands and such petitions should be thrown to the winds by imposition of exemplary costs. If there is no candid disclosure of relevant and material facts or the petitioners are guilty of misleading the Court, the petition is to be dismissed at the threshold without considering the merit of the claim. Reference being made to the judgment of the Apex Court in the case of **PRESTIGE LIGHTS LTD., V. STATE BANK OF INDIA**⁵ in the circumstances becomes apposite. The Apex Court holds as follows:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R. v. Kensington

⁵ (2007) 8 SCC 449

Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] , in the following words:

“[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.”

(emphasis supplied)

35. *It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”*

In the light of the facts so narrated hereinabove and the judgment of the Apex Court in the case of **PRESTIGE LIGHTS** (*supra*), the case at hand is to meet its dismissal with imposition

of exemplary costs, as the petitioners have invoked the jurisdiction of this Court both under Articles 226 and 227 of the Constitution of India and Section 482 of the Cr.P.C. with unclean hands.

16. In the light of point Nos.(i) and (ii) having been answered in the negative against the petitioners, the other point with regard to merits of the matter need not be gone into, as both the points act as a threshold bar for entertaining the petition and the doors of this Court cannot be considered to be open or even *ajar* to the petitioners, but they are closed. Therefore, point No.(iii) is not answered.

17. In view of the preceding analysis and for the aforesaid reasons, I pass the following:

ORDER

Writ Petition is dismissed with exemplary cost of Rs.1,00,000/- (Rupees One lakh only) to be paid by the

petitioners to the High Court Legal Services Authority, Bengaluru within four weeks from the date of receipt of a copy of this Court and file an acknowledgment to that effect before the Registry of this Court.

**Sd/-
JUDGE**

bkp
CT:MJ