

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**:SINGLE BENCH:**

**{JUSTICE ANAND PATHAK, J.}**

**MISC.CRIMINAL CASE NO.51674/2022**

**Major Amit Pathak**  
**Vs.**  
**State of Madhya Pradesh & Anr.**

**CRIMINAL REVISION NO.2594/2022**

**Sumit Pathak**  
**Vs.**  
**State of Madhya Pradesh & Anr.**

**CRIMINAL REVISION NO.2595/2022**

**Sarvesh Chandra Pathak & Anr.**  
**Vs.**  
**State of Madhya Pradesh & Anr.**

**MISC. CRIMINAL CASE NO.25093/2023**

**Major Amit Pathak**  
**Vs.**  
**State of Madhya Pradesh & Anr.**

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Shri Harshit Sharma and Shri Avinash Chaturvedi – Advocates for the petitioners.

Shri Ravindra Singh Kushwah – Dy. Advocate General for the respondent/State.

Shri R.K. Sharma – Senior Advocate with Shri Mahendra Chaudhary and Shri Abhijeet Singh Tomar – Advocates for respondent No.2/complainant.  
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**ORDER**  
**(Delivered on 1<sup>st</sup> day of July, 2024)**

1. Regard being had to the similitude of the controversy as all cases originate from the same cause of action, all petitions were heard analogously and decided by this common order. For convenience's sake, facts as narrated in M.Cr.C.No.51674/2022 are taken into consideration.
2. Petitioner (of M.Cr.C.No.51674/2022) is husband of respondent No.2 who happens to be his wife and complainant of the case and has filed the FIR vide crime No.38/2021 at Police Station Mahila Thana Padav District Gwalior for the offence punishable under Sections 498-A, 377, 354, 506, 34 of IPC and Section 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as “the DP Act”). Through this petition under Section 482 of Cr.P.C. petitioner sought following reliefs:

*“a. That this Hon'ble Court may kindly be pleased to allow this quashing petition and the F.I.R. bearing Crime No.38/2021 lodged at P.S. Mahila Thana, District Gwalior, Madhya Pradesh u/s 498-A, 377, 354, 506, 34 of Indian Penal Code 1860 and Section 4 of Dowry Prohibition Act, 1961 and all other consequential proceedings arising therewith against the present petitioner, may kindly be quashed and set -aside and the entire proceedings so initiated &*

*pending against the petitioner in relation to instant matter, may kindly be dropped.”*

3. Complainant/respondent No.2 filed the complaint against the petitioner and other co-accused (who have challenged the proceedings by way of separate criminal revisions) that after marriage being solemnized with the present petitioner on 29-04-2018 according to Hindu Rites and Rituals at Bhind, after some time, petitioner - Major Amit Pathak/husband and other family members viz. Sumit Pathak (brother-in-law), Sarvesh Chandra Pathak (father-in-law) and Smt. Kusumlata Pathak (mother-in-law) raised dowry demand for Fortuner Car and financial assistance for construction of house. She was subjected to harassment time and again and meanwhile when she conceived then she was forced to abort. Not only that, husband of complainant who is an Army Officer and posted as Major at Manipur, since inception/honeymoon, forced her for unnatural anal and oral sex.
4. Her allegations are that after marriage on 29-04-2018, when they went to Manali for honeymoon, there her husband committed unnatural anal and oral sex. Thereafter, this act was repeated many a times in married life. When she objected, then she was beaten up by her husband. Her father-in-law also tried to gain undue proximity

which she resisted. On the basis of such allegations, FIR was registered and investigation was carried out. Except present petitioner – Major Amit Pathak, all petitioners were granted benefit of anticipatory bail. Petitioner -Amit Pathak/husband of complainant was given benefit of bail by the Apex Court. Medical examination of complainant was carried out and her anal and vaginal swabs along with her clothes were seized and referred for FSL report. Thereafter, charge-sheet was filed before the trial Court and charges were framed.

5. Petitioner has challenged registration of FIR as well as consequential proceedings including charge-sheet whereas co-accused Sumit Pathak has filed Cr.R.No.2594/2022 and his parents have filed Cr.R.No.2595/2022 by which framing of charge as well as all other consequential proceedings arising out of FIR registered at crime No.38/2021 at Police Station Mahila Thana Padav District Gwalior for the offence under Sections 498-A, 377, 354, 506, 34 of IPC and Section 4 of the DP Act and charge-sheet have been challenged. Those revisions are in fact revision petitions under Section 397, 401 of Cr.P.C. as well as petitions under Section 482 of Cr.P.C.
6. Another petition was preferred by the present petitioner -Major

Amit Pathak bearing M.Cr.C.No.25093/2023 in which order of trial Court dated 17-05-2023 was challenged wherein direction was given to the petitioner to tender DNA sample for DNA Profiling. However, crux of the matter is challenge to the FIR and consequential proceedings. Therefore, all petitions were analogously heard and decided by this common order.

7. It is the submission of learned counsel appearing for the petitioner that petitioner is an Army Officer and at present posted as Major at Manipur. He has been posted at different field postings at Faridkot, Jammu & Kashmir, Nagaland from time to time and is a sincere and reputed army officer. Marriage of petitioner and respondent No.2 - Ms. Pooja Pathak Sharma was solemnized on 29-04-2018 at Bhind. For some time both lived together at Etawah and thereafter at different places of posting of petitioner as per Army Rules in this regard. According to learned counsel, respondent No.2 was mentally unstable and underwent treatment. She used to fight with petitioner on any flimsy pretext, abused him and whenever she visited at front posting at Nagaland and Manipur she ridiculed him in front of his officers/peers and levelled various allegations over him.
8. On 06-08-2020 couple resided for last time together in Etawah and when her mental ailment and disposition went beyond tolerance

then an application was moved by the petitioner on 17-08-2020 before Superintendent of Police, Etawah regarding mental ailment of his wife and possible consequences. Said document finds place as Annexure A/6 (page 222) in Cr.R.No.2594/2022.

9. On 25-09-2020 petitioner filed divorce case against his wife -respondent No.2 herein. Copy of the said divorce petition is filed as Annexure A/2 with the petition. In the said petition, petitioner has referred in detail about the temperament and mental ailment of respondent No.2 and her conduct from time to time. He referred the fact that respondent No.2 used to fight with him for no reasons and was very reluctant to live with his parents. Since he is an Army Officer, therefore, at times he is posted at front/border where he cannot keep his family then in that condition she used to refuse to live with his family members at Etawah and used to live at Bhind with her parents. Without any information she used to come to the field posting at Faridkot and Nagaland to create ruckus there. Her conduct constantly caused mental harassment to the petitioner.
10. Learned counsel for the petitioner also referred the fact that petitioner made a complaint to the officers at Jalukie Police Station, Nagaland also and raised his grievance in the said letter about the acts/temperaments of his wife. Therefore, it is not a case where

petitioner harassed respondent No.2 but it is a case where respondent No.2 constantly harassed the petitioner. Therefore, compelled by the circumstances, petitioner filed divorce petition on 25-09-2020 before Family Court, Etawah (U.P.) raising all grievances. In the said proceedings, notice to respondent No.2 was issued and respondent No.2 was called time and again on 03-10-2020, 05-10-2020, 06-10-2020 and 09-10-2020 for mediation but she did not turn up. On the other hand, she was harassing petitioner while visiting at places of his postings, therefore, petitioner wrote a grievance letter dated 11-10-2020 to Jalukie Police Station, Nagaland regarding suicidal tendency and inappropriate stay of respondent No.2 at his accommodation in 36 Assam Rifles at Nagaland. It appears that respondent No.2 did not appear in Court to participate in divorce proceedings but returned back on 12-10-2020 from Nagaland to her maternal home at Bhind and as an afterthought complaint was filed on which FIR at crime No.38/2021 at Police Station Mahila Thana Padav District Gwalior for the offence under Sections 498-A, 377, 354, 506, 34 of IPC and Section 4 of the DP Act was registered. It is interesting to note that written complaint was filed on dated 24-01-2021.

- 11.** Therefore, it is the submission of learned counsel for the petitioner

that registration of FIR on 24-01-2021 is an afterthought, just to exert pressure over petitioner and his family. It is used as counterblast of divorce petition filed by petitioner on 25-09-2020.

- 12.** As submitted, without going into the nature of allegations and without undertaking any preliminary enquiry as mandated by the Apex Court in the case of **Lalita Kumari Vs. Government of U.P. and others, (2014) 2 SCC 1** directly case was registered. Said approach of police is arbitrary and illegal and shows the intention. Interestingly, no Pen Drive and CD have been recovered in the case whereas allegations of complainant was such that petitioner used to record such acts when allegedly committed with her. It is a case of delayed FIR because petitioner allegedly subjected respondent No.2 for unnatural sex since inception of marriage on 29-04-2018, therefore, complaint ought to had been filed at the earliest in April-May 2018 or afterwards, but marriage was solemnized on 29-04-2018 and FIR was registered on 24-01-2021. Therefore, FIR is delayed by 2 years and 9 months. That too, when divorce petition has been filed by petitioner on 25-09-2020.
- 13.** Even Exhibits A,B and C regarding medical report indicate false nature of evidence. In fact, medical opinion belies the allegations. No injury was found over the person of complainant. It is difficult to



keep the semen and sperms intact after 5 months because in those medical papers it has been specifically mentioned that petitioner and respondent No.2 are living separately for last 5 months. Therefore, after such long delay, samples were taken for FSL report which was a futile exercise. Surprisingly, FSL report prepared in such manner to show involvement of petitioner but it is common knowledge that those semen/sperm and their existence are alive only for certain period, usually 3 days and not beyond that. It is highly improbable that anal swab/vaginal swab indicates presence of semen/sperm after five months. In this regard different Forensic Science Journals and Literature connected to it were referred.

14. Learned counsel for the petitioner also referred the judgment of Apex Court in the case of **Navtej Singh Johar and Others Vs. Union of India Through Secretary, Ministry of Law and Justice, (2018) 10 SCC 1** and submits that after amendment in Section 375 of IPC in 2013 by Amendment Act, it has been clarified that by impact of subsequent repeal, no offence is made out regarding marital rape due to Exception No.2 as contained in Section 375 of IPC. He relied upon the judgments of Coordinate Bench of this Court in the case of **Umang Singhar Vs. State of Madhya Pradesh through Station House Officer and another, 2023 SCC OnLine**

**MP 3221 and Manish Sahu Vs. State of Madhya Pradesh & Anr. in M.Cr.C.No.8388/2023** to submit that no offence is made out if husband and wife shares carnal pleasure, therefore, on this count also, case of petitioner deserves interference. In support of his submissions, learned counsel for the petitioner placed reliance on the judgments of Apex Court in the case of **T. Barai Vs. Henry Ah Hoe & Anr. (1983) SCC (Cri.) 143** and **Enforcement Directorate, Government of India Vs. Kapil Wadhwan & Anr. 2023 LiveLaw (SC) 249.**

15. Learned counsel for the respondent/State opposed the submissions advanced by learned counsel for the petitioner and according to him trial shall unfold the truth. Petitioners are facing trial under Section 377 and 354 of IPC and it can only be decided by evidence.
16. Learned senior counsel for respondent No.2/complainant elaborately argued the matter and submits that looking to the nature of dispute, trial is mandatory. Petitioners were responsible for abortion of respondent No.2 and they consistently asked for bringing Fortuner car and raised dowry demand time and again. Respondent No.2 was subjected to unnatural sex at the hands of her husband petitioner since her marriage. Provisions of Section 375 of IPC is different than the provisions of Section 377 of IPC.

17. Through various documents, learned senior counsel appearing for respondent No.2 tried to suggest that petitioner raised dowry demand, therefore, he is liable for said punishment which Court deems fit. He tried to distinguish Section 375 *vis-a-vis* Section 377 of IPC and prayed for dismissal of petition. To bolster his submissions, learned senior counsel relied upon the judgment of Apex Court in the case of **Tilly Gifford Vs. Michael Floyd Eshwar & Anr. (2018) 2 SCC (Cri.) 630, Central Bureau of Investigation Vs. Arvind Khanna, (2020) 1 SCC (Cri.) 94, Dineshbhai Chandubhai Patel Vs. State of Gujarat & Ors. 2018 (2) J LJ 373 (SC), Saranya Vs. Bharathi & Anr. 2022 (2) MPLJ (Cri.) 26 (SC), Ramveer Upadhyay & Anr. Vs. State of U.P. & Anr. 2023 (1) MPLJ (Cri.) 200 (SC), Pratibha Vs. Rameshwari Devi & Ors. (2008) 1 SCC (Cri.) 399 and Balkrishna Devda & Ors. Vs. State of M.P. & Anr. 2022 (2) MPLJ (Cri.) 402.**
18. Heard learned counsel for the parties at length and perused the documents/charge-sheet as well as synopsis submitted by the counsel for the parties.
19. For appreciating the controversy in better perspective, narration of following dates and events are important:

Dates	Events
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29/4/2018	Marriage took place between petitioner - Major Amit Pathak and respondent No.2 - Mrs. Pooja Pathak Sharma.
01/08/20	Letter of Commanding Officer of petitioner - Major Amit Pathak to vacate married accommodation at earliest.
06/08/20	Couple resided for the last time together in Etawah
17/08/2020	An application was sent to the Superintendent of Police, Etawah regarding mental ailment of Mrs. Pooja Pathak.
22/08/2020	Mrs. Pooja Pathak all alone went to Jalukie, Nagaland where Major Amit Pathak was posted without any intimation
25/09/2020	Petitioner - major Amit Pathak filed divorce case against Mrs. Pooja Pathak Sharma in Etawah, Uttar Pradesh.
03/10/20	Notice for mediation in divorce case was served to Mrs. Pooja Pathak Sharma through WhatsApp to appear on 05-10-2020 at Family Court Etawah.
05/10/20	Again, intimation for mediation in divorce case was given to Mrs. Pooja Pathak Sharma through E-mail to appear on 09.10.2020 at Family Court Etawah
05/10/20	Again, intimation for mediation in divorce case was served to Mrs. Pooja Pathak Sharma through SMS to

	appear on 09.10.2020 at Family Court Etawah.
06/10/20	Again, intimation for mediation in divorce case was served to Mrs. Pooja Pathak Sharma through SMS to appear on 09.10.2020 at Family Court Etawah.
09/10/20	Mrs. Pooja Pathak Sharma did not appear for mediation, which ultimately failed.
11/12/20	Grievance letter was tendered by petitioner - major Amit Pathak to Jalukie Police Station regarding suicidal tendency and inappropriate stay of Mrs. Pooja Pathak Sharma at accommodation area of 36 Assam Rifles.
12/12/20	Mrs. Pooja Pathak Sharma came back to her maternal home at Bhind.
24/01/2021	FIR bearing Crime No. 38/2021 has been lodged at P.S. Mahila Thana, Gwalior (M.P.) on the basis of written complaint tendered by Mrs. Pooja Pathak Sharma for the offences u/s. 498A, 377, 354, 506 of IPC 1860 and section 4 of the DP Act, 1961 against the petitioners - Major Amit Pathak (husband), Sumit Pathak (Brother-in-law), Sarvesh Chandra Pathak (Father-in-law) and Kusumlata Pathak (Mother-in-law)
24/01/2021	Statement under Section 161 of Cr.P.C. of Pooja

	Pathak Sharma was recorded.
24/01/2021	Statement under Section 161 of Cr.P.C. of Rajesh Sharma (father of Pooja Sharma) was recorded.
24/01/2021	Statement under Section 61 of Lokesh Tiwari (Jijaji of Pooja Pathak) was recorded.
24/01/2021	Statement under Section 161 of Cr.P.C. Raj Kumar Gupta (friend of Pooja Pathak's father) was recorded.
25/01/2021	Medical examination of Mrs. Pooja Pathak Sharma took place which is inconclusive and bears no injuries as well as she admits that from last five months, she is living away from her husband.
25/01/2021	Statement under Section 164 of Cr.P.C. of Pooja Pathak Sharma was recorded.
26/01/2021	Statement under Section 161 of Cr.P.C. of Puneet Sharma (brother of Pooja Pathak) was recorded.
26/01/2021	Statement under Section 161 of Cr.P.C. of Neetu Pathak (friend of Pooja Pathak) was recorded.
27/01/2021	Statement under Section 161 of Cr.P.C. of R.K. Tiwari (friend of Pooja Pathak's father) was recorded.
27/01/2021	Statement under Section 161 of Cr.P.C. of Narendra Pachori (friend of Pooja Pathak's father) was recorded.
02/02/21	Statement under Section 161 of Cr.P.C. of Priyanka Tiwari (sister of Pooja Pathak) was recorded.
06/04/21	Transfer Petition (Civil) No. 888/2021 preferred on 06.04.2021 before Hon'ble Apex Court to transfer

	divorce case filed by the petitioner - major Amit Pathak from Etawah to Gwalior.
07/05/21	Petitioner - Major Amit Pathak got interim relief of stay on arrest by Hon'ble Apex Court in SLP (Crl.) No. 3594/2021.
22/06/2021	Respondent No.2/complainant filed application Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act of 2005") before Court in Gwalior against petitioner - Major Amit Pathak (husband), Sarvesh Chandra Pathak (Father-in-law) and Kusumlata Pathak (Mother-in-law) but no allegation has been made against petitioner - Sumit Pathak (Brother-in-law).
20/06/2022	Charges were framed against petitioners Sumit Pathak and Smt. Kusumlata Pathak for offence under Sections 498-A, 506-II of IPC and Section 4 of the DP Act and against Sarvesh Chandra Pathak charges were framed under Sections 498-A, 354, 506 -II of IPC and Section 4 of the DP Act.
03/11/22	Petitioner - Major Amit Pathak got relief of permanent bail by Hon'ble Apex Court in SLP (Crl.) No. 3594/2021.
08/12/22	Divorce case was transferred from Etawah to Gwalior

	by order of the Hon'ble Apex Court.
09/02/23	Application under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act of 1955”) was filed by Mrs. Pooja Pathak Sharma for restitution of conjugal rights before Family Court Gwalior which is registered at RCS HM No. 188/2023
15/09/2023	In-camera mediation proceedings were held by this Court which ultimately failed and even before the Mediator the said proceedings failed as the report is attached in CRR No. 2594/2022.

**Allegations against the petitioner/husband.**

20. From perusal of table indicating dates and events it appears that marriage was solemnized on 29-04-2018 and contents of written complaint on which FIR was registered indicates that after marriage when both went to Manali, purportedly for honeymoon, then petitioner committed offence of unnatural sex for the first time with respondent No.2. Therefore, as alleged offence of unnatural sex was committed around April -May, 2018 for the first time whereas the complaint was made for the first time on 24-01-2021 on which FIR was registered. Therefore, after commission of offence for the first time, respondent No.2 took 2 years and 9 months to lodge FIR regarding commission of offence under



Section 377 of IPC against her husband. During this period, she went many a times to her parents' home at Bhind but never told anyone about such incident.

- 21.** Not only this, contents of FIR indicates that petitioner allegedly committed unnatural sex with respondent No.2 many a times. When respondent No.2 did not accept the alleged act of petitioner then she could have resisted earlier when she had made complaint against the petitioner to the senior officers of petitioner after marriage about his other conduct of not keeping her at field posting and before lodging of FIR. Many instances have been narrated by the petitioner in his application for divorce as well as demonstrated through documents filed with the petition/revisions which are part and parcel of the record. Therefore, it is difficult to assume that a lady who is so proactive about her disposition, never raised her voice against such act of unnatural sex either wither senior officers of petitioner or when counseling undertaken between the parties by the senior officers of the petitioner. Therefore, allegations are to be tested with caution.
- 22.** Although delay is not always the vital ground on which complaint can be discarded but once such inordinate delay occurred then Court has to be circumspect about the allegations and its nature as

surfaced in the evidence, so that innocent people may not suffer.

23. In the present case no legally admissible evidence to substantiate the allegations which were levelled in respect of anal and oral sex exists. Even the medical examination of respondent No.2 reveals that she was not living with her husband for more than 5 months and even the examining doctor during her medical examination at multiple instances noted this fact which assumes importance while going through the FSL report of seized articles of respondent No.2.
24. In medical examination, no injuries were found over her person/private parts. Interestingly male semen/sperms were found in vaginal and anal swab of complainant and therefore, prosecution tried to raise submissions that petitioner committed unnatural sex with his wife i.e. respondent No.2, his semen is found in vaginal and anal swab as well as over her clothes, but said submission is detrimental in the present case. Petitioner and respondent No.2 got separated five months back and in charge-sheet, no evidence of their reunion is referred. Therefore, it is highly improbable that after 5 months semen/sperms of petitioner found in anal and vaginal swab.
25. In this regard one research work is submitted by counsel for the petitioner in Forensic Science International, 19 (1982) 135 -154 by G.M. Willott and J.E. Allard gives an existing study over the period

of existence of sperm in rectal and anal swabs:

***“SPERMATOZOA - THEIR PERSISTENCE AFTER SEXUAL  
INTERCOURSE***

*G. M. WILLOTT and J. E. ALLARD*

*The Metropolitan Police Forensic Science Laboratory, 109 Lambeth Road,  
London SE1 7LP (Gt. Britain)*

*(Received March 11, 1981; accepted July 6, 1981)*

**Summary:**

The longest times after intercourse that spermatozoa have been found on a total of 2410 casework swabs are as follows:

internal vaginal swabs	:	120 hours
external vaginal swabs	:	120 hours
rectal swabs	:	65 hours
anal swabs	:	46 hours
oral swabs	:	6 hours (9 hours on lips).

These results can be of use when attempting to estimate the time of the last act of intercourse.

**Introduction:**

Data collection has become an important part of a forensic scientist's work so that he can assess the value of each test and indicate the significance of results when giving evidence in a court of law. In sexual assault cases, the amount of information available to the forensic scientist has increased considerably in the last few years. There have been several reports giving details of the length of time after intercourse that spermatozoa can be found. However, the results have usually been based on small numbers or from volunteer donors

rather than actual cases. There is a particular shortage of published information on the persistence of semen following anal and oral intercourse.

This paper is intended to clarify the situation by giving the results of examination for spermatozoa on vaginal, anal and oral swabs taken at known times after alleged intercourse in sexual assault cases submitted to the Metropolitan Police Forensic Science Laboratory during the last five years. Murder cases have been excluded; the data presented refer to living victims.

**Materials and methods:**

The swabs used were plain cotton wool swabs. The routine examination for semen is to cut off with a new scalpel blade  $\frac{1}{4}$  of the cotton wool tip and put it into 1 ml distilled water. After agitation to assist extraction of the semen into the water, the cotton wool is removed from the tube and one drop of the extract is placed on a microscope slide and allowed to dry. It is then heat fixed and stained with haematoxylin and eosin. A further sample of the extract is used to measure the acid phosphatase activity as described by Davies [1]. The remaining  $\frac{3}{4}$  of the swab may be used for grouping any semen present or for the identification of other body fluids.

The density of spermatozoa present on each microscope slide has been estimated using the classification described by Kind [2] but with an extra category when only a very few spermatozoa could be found:

- ++++ many in every field.
- +++ many or some in most fields.
- ++ some in some fields, easy to find.
- + hard to find.
- Few very small number on the whole slide.

0 none.

In addition, the presence of tails on any of the spermatozoa is recorded. The results from all tests carried out on swabs in sexual assault cases are recorded on an ICL 1904 computer for quick retrieval and reference.

**Results and discussion:**

***Internal vaginal swabs***

The number of swabs which fall into each category of sperm density is shown in Table 1 and Figs. 15. The total number of swabs on which spermatozoa were found is illustrated in Fig. 6 together with the swabs on which at least one spermatozoon had a tail. The longest time recorded for spermatozoa is 120 hours and for those with tails, the record is 26 hours. Spermatozoa were found on a cervical swab taken 179 hours (74 days) after

**TABLE 1**

Density of spermatozoa on 1332 internal vaginal swabs

Sperm density*	No. of swabs	%
++++	78	6
+++	157	12
++	229	17
+	182	14
few	112	8
0	574	43
Total	1332	

\*For explanation of symbols see Materials and methods.

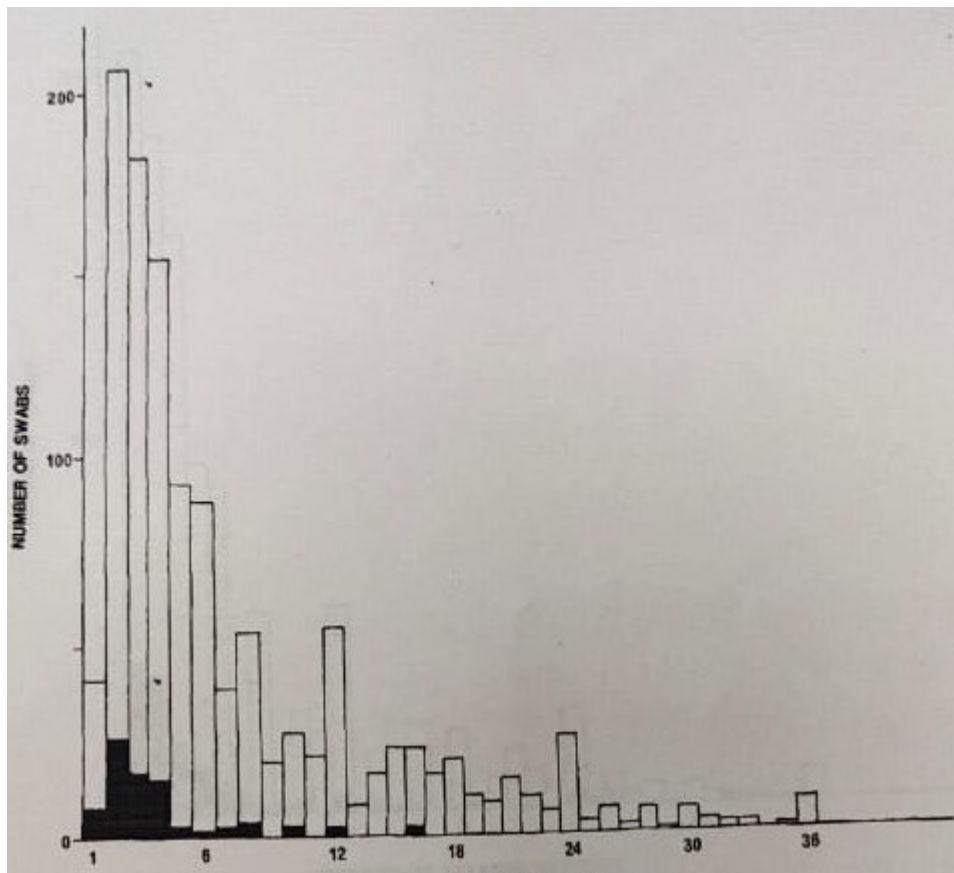


Fig. 1. Internal vaginal swabs. Occurrence of swabs with +++++ spermatozoa compared with total number of swabs examined.

intercourse. The numbers examined are quite small for the longer times after intercourse, so that, although they provide a very useful guide, they may not represent the longest time spermatozoa can persist.

The degradation of spermatozoa in the female reproductive tract results partially from phagocytosis by neutrophilic leucocytes and occasionally by mononuclear cells [3]. Phagocytosis of spermatozoa occurs in both the vaginal and cervical fluids, all components (head, tail and principal piece) having been seen in the cytoplasm of neutrophils by Moyer et al. [3].

Previous reports on the persistence of spermatozoa in the vagina show considerable variation and are shown in Table 2 [4-15].

The usefulness of the concentration of spermatozoa on vaginal swabs as a guide to the likelihood of grouping success has been examined previously along with the variation in the chances of ABO grouping compared with the blood group of the swab donor [16, 17].

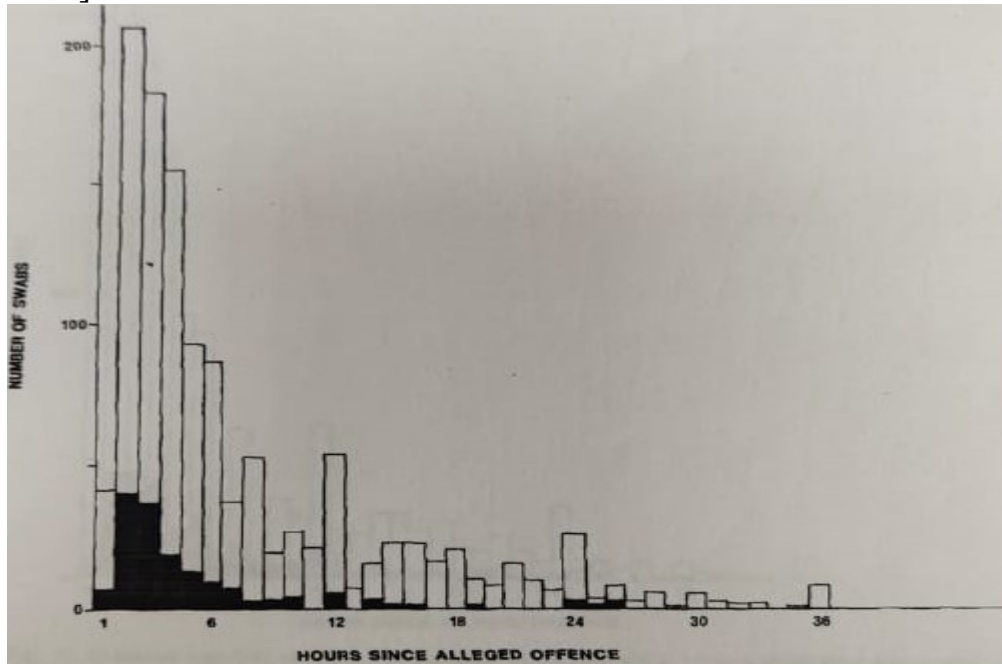


Fig. 2. Internal vaginal swabs. Occurrence of swabs with +++ spermatozoa compared with total number of swabs examined.

### **External vaginal swabs:**

This group includes swabs from the labia, vulva and perineum. The totals for each category in Figs. 7-11 are shown in Table 3.

The percentage of external swabs stained with semen is low compared with the frequency for internal vaginal swabs (Tables 1 and 3, Figs. 6 and 12). It is common practice when the internal swab bears semen for the external swab not to be examined. The external swab is therefore more likely to be examined when the internal is negative and this could account for the lower percentage of external swabs showing spermatozoa.

Figure 12 gives the total number of external vaginal swabs on which spermatozoa were found. It also shows the longest time after intercourse that spermatozoa and sperm with tails have been found is 120 hours and

16 hours respectively, which is very similar to the times of 120 hours and 26 hours for internal vaginal swabs.

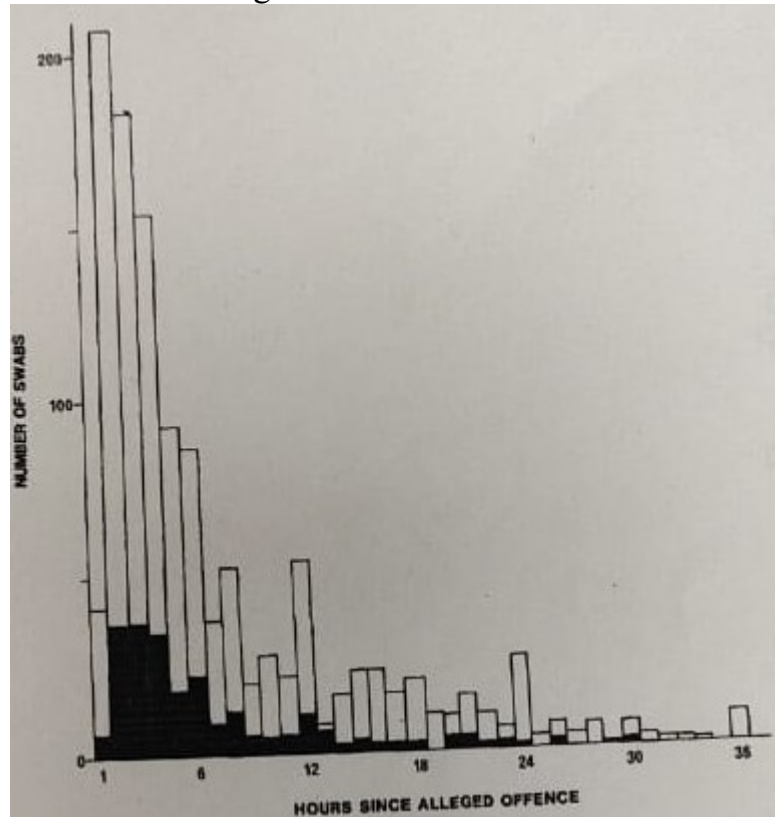


Fig. 3. Internal vaginal swaba. Occurrence of swabs with ++ spermatozoa compared with total number of swabs examined.

### **Anal and rectal swabs:**

There appears to be little published information on the persistence of spermatozoa in the rectum and anus. Sharpe [6] has found spermatozoa in the rectum up to 24 hours after anal intercourse. Enos and Beyer [18] reported that sperm can be present for up to 20 hours after an offence of buggery.

Data from swabs submitted to the Metropolitan Police Forensic Science Laboratory (Figs. 1322) show that spermatozoa can persist for over two days. Histograms for the ++++ category have not been prepared because only one such anal swab and two rectal swabs were recorded. These were taken 3, 4 and 6 hours respectively after anal intercourse. The totals for anal and rectal swabs are listed in



Table 4.

Figures 17 and 22 indicate that it is comparatively rare to find tails on spermatozoa on anal and rectal swabs, especially after more than 6 hours, but sperm heads were found up to 46 hours after on an anal swab and 65 hours on one rectal swab.

26. Perusal of report indicates that duration of semen in anal or vaginal swabs is not more than 3 days at best. One study conducted and published in LGC Forensics about investigation in sexual offences also reveals that semen at anal swab are usually found upto 3 days and sample can be taken upto 3 days. Normally, semen at anal swab should be found within 24 hours after intercourse. Following conclusions can be drawn from the Journal LGC Forensics about vaginal swab and anal swab:

**“Persistence of semen following vaginal intercourse**

***Semen on vaginal swabs following full internal ejaculation:***

***\* Should be found within 24 hours after intercourse***

***\* May be found up to 3 days***

***\* Occasionally found up to 7 days***

***\* Can persist longer in cervix***

***\* Samples taken up to 7 days***

***Depends factors such as degradation, activity accelerates vaginal drainage, washing, injuries etc***

**Persistence of semen following anal intercourse**

***Semen on anal swabs following full internal ejaculation:***

***\* Should be found within 24 hours after intercourse***

***\* Occasionally found up to 3 days***

***\* Samples taken up to 3 days***

***Depends on factors such as degradation, activity, injuries, defecation***

***Also want vaginal swabs to address anal intercourse.”***

27. Therefore, it is highly surprising that after 5 months samples have been collected by the police and very surprising semen was found over her penity/vaginal swab/anal swab. Said Journal further elaborates as under:

***“Time Since Intercourse***

***The interval between intercourse taking place and when the evidence is seized eg time of medical examination.***

***\* The greater the time delay the less likely you are to find semen***

***\* Factors that affect TSI findings:***

***-Anything that accelerates drainage***

***-Washing-external swabs, clothing***

***-Natural degradation***

***\* Effectiveness of sampling plays a role***

***Time Since Intercourse***

***\* we need to consider the persistence of seminal components:***

***acid phosphatase***

***-Vagina-2-3 days***

*-Anus-1 day*

*-Mouth - less than 1 day*

*-Clothing until washed*

*spermatozoa*

*-Vagina up to 7 days*

*-Anus - up to 3 days*

*-Mouth up to 24 hours*

*-Clothing - indefinitely?? Washing may not  
remove all sperm.”*

28. Counsel for the petitioner also placed abstract from the Journal of Forensic Sciences Edition 2016 in which research paper on Criminalistics was prepared by David G. Casey Ph.D. Katarina Domijan, Ph.D. Sarah MacNeill, B.Sc. Damien Rizet, M.Sc. Declan O'Connell, B.Sc. and Jennifer Ryan Ph.D. The abstract of the subject was in respect of Persistence of Sperm and the Development of Time Since Intercourse (TSI) was discussed and presented. Abstract was as under:

*“ABSTRACT: The persistence of sperm using confirmatory microscopic analysis, the persistence of sperm with tails, time since intercourse (TSI) analysis, and results from the acid phosphatase (AP) reaction from approximately 5581 swabs taken from circa 1450 sexual assault cases are presented. The observed proportions of sperm in the vagina and anus declines significantly after 48 h TSI, and sperm on oral swabs were observed up to 15*

*h TSI. The AP reaction as a predictor of sperm on intimate swabs is questioned. All AP reaction times gave a low true positive rate; 23% of sperm-positive swabs gave a negative AP reaction time. We show the AP reaction is an unsafe and an unreliable predictor of sperm on intimate swabs. We propose that TSI not AP informs precase assessment and the evaluative approach for sexual assault cases. To help inform an evaluative approach, TSI guidelines are presented.”*

In the said Article Forensic Sciences addressed a number of frequently asked questions raised by the Forensic Scientist when investigating sexual assault cases. Questions are:

- “\* Is there a time interval that you would have an expectation of finding sperm on vaginal swabs?*
- \* Is there a time interval that you would have an expectation of finding sperm with tails on vaginal swabs?*
- \* Is there a time interval that you would have an expectation of finding sperm on internal anal swabs?*
- \* Is there a time interval that you would have an expectation of finding sperm on internal oral swabs?*
- \* Is AP time a good indicator for the presence of sperm on vaginal swabs?*
- \* What, if any, is the best cutoff time for the AP reaction on swabs?*
- \* Is there a relationship between AP reaction time and the TSI in our data set?*
- \* Is there a relationship between AP reaction time and TSI*

*when vaginal swabs are positive or negative?”*

Here the relevant questions appear to be question No.1,2&3, discussion on these questions are as under:

**“Question No.1:**

***Is there a time interval that you would have an expectation of finding sperm on vaginal swabs?***

*The compiled results for all sperm-positive vaginal swabs up to a TSI of 72 h are presented in Table 1. The difference between the proportions of sperm-positive vaginal swabs at different time intervals is statistically significant ( $p$ -value  $< 0.001$ ). The expected proportion of sperm-positive vaginal swabs at TSI intervals with a 95% confidence interval (CI) is shown in Fig. 1. This analysis shows that as a guideline, the expectation of observing sperm in the vagina decreases significantly after 18 h (0.35) and again after 48 h (0.2), and beyond 96 h, the expectation of observing sperm in the vagina can be considered extremely low (0.02) (Fig. 1, Table 2).*

*The persistence times for each individual vaginal swab type are presented in Figs 2-5. Included for reference are data tables for each swab type (Tables 3-6). In terms of sperm distribution, trace and 1+ were the most common grade recorded beyond 48 h (Figs 2-5). The longest recorded persistence time for sperm in the SAD was a 1+ on a HVS sampled at a TSI of approximately 96 h after alleged intercourse (Fig. 3). No sperm was recorded on any vaginal swab type beyond 96 h.*

**Question 2:**

*Is there a time interval that you would have an expectation of finding sperm with tails on vaginal swabs?*

*The morphological characteristics (shape, coloration, and definition) of sperm degrade over time in the vagina. Qualitative changes due to TSI usually result in the loss of tails, the loss of quality, and a reduction in sperm abundance. The presence of tails can be useful for TSI estimations, but the time lapse associated with the loss of tails is unclear (7). Silvermann (8) found no significant difference in the proportion of sperm with or without tails at any time after sexual intercourse and has suggested that the loss of tails is not a useful indicator of time since intercourse. Our findings show that this is not the case; within the first 12 h, the expectation of observing sperm-positive vaginal swabs tails was 0.15, and this expectation declines at a TSI greater than 24 h (0.09) (Fig. 6). This would be in agreement with the study by ADavies (9), where tails were most frequently found on sperm swabs taken up to 12 h. However, sperm with tails have been reported as late as 72 h (10). No oral or anal sperm-positive swabs with tails were recorded in the database. Our findings show that the expectation of finding sperm with tails after 24 h is very low (Table 7) and that sperm with tails on vaginal swabs are more likely to be detected within 12 h TSI.*

**Question 3:**

*Is there a time interval that you would have an*

***expectation of finding sperm on internal anal swabs?***

*There is little published information on the persistence of sperm in the anus. In general, sperm can be detected in the anus up to 24 h TSI. Sperm can persist for over 2 days after anal intercourse (9). A total of 510 internal anal swabs were examined in this study. The persistence and distribution of sperm- positive anal swabs at each TSI shown are Fig. 7 and Table 8. The expectation of observing a sperm-positive anal swab at a TSI of less than 6 h is 0.24, and this expectation drops as the TSI increases. The expectation of finding anal swabs positive for sperm at a TSI of less than 48 h (0.16) can be considered low. and the expectation of finding sperm at TSI greater than 48 h can be considered extremely low, 0.023 (Table 9), as it was observed only once of 42 swabs at a TSI greater than 48 h. Our experience at FSI is that it is unlikely that sperm will be detected on internal swabs beyond a TSI of 24 h. Generally, the examination for the presence of sperm in internal anal swabs is not carried out beyond a TSI of 72 h, which is in agreement with the published materials. The longest recorded persistence time for a sperm-positive internal anal swab (1+) was at a TSI of 85 h (Fig. 7)."*

**29. In Modi's Textbook of Medical Jurisprudence and Toxicology**

Twenty-first Edition discussed in following words:

*"5. The vaginal secretion from the posterior fornix should always be obtained by introducing a plain sterile cottonwool swab (or 1 ml. pipette) and the material*

*obtained on the swab must immediately be trappelled to a microscopic slide and spread out in the form of a thin film and fixed. After staining, the slide should then be examined microscopically for the presence of human spermatozoa, which is a positive sign of rape particularly in the case of children and grown-up virginsangre if does not necessarily indicate rape, but it proves the occurrence of a recent sexual intercourse. Even presence of motile spermatozoa is not necessarily indicative of intercourse few hours before the time of examination (The presence of spermatozoa in the vagina mafter intercourse has been reported by Pollak (1943) from 30 minutes to 17 days, by Morrison (1972) upto 9 days in vagina and 12 days in the cervix. However, in the vagina of a dead woman they persist for a longer period. Estimation of acid phosphatase levels in fresh specimen may be helpful in opining for presence of seminal fluid.”*

- 30.** In all studies it is clear that no sperm can be found over the clothes/anal swab/vaginal swab more than some days and certainly not remain in existence for 5 months. Therefore, taking such swabs and finding semen over penty vide Exhibit -A, vaginal slide -B and anal slide -C appears to be a case in which petitioner has been implicated on false pretext. FSL report dated 19-03-2021 indicates that over all these three exhibits spot of semen and human sperms were found. Semen and sperms as discussed above cannot exist for



such long period because during that period complainant must have underwent bath, cleanliness and other functions. Therefore, such report supports the cause of petitioner and such report in fact indicates nature of allegations which are primarily motivated.

- 31.** In the FIR complainant has referred the fact that petitioner has videographed such obscene acts and blackmail her. However such contention lacks merits on the ground that no such CD or pen drive has been recovered by the Investigating Officer from the petitioner or from respondent No.2. Similarly it is very unnatural to the petitioner to blackmail his wife for such acts. There is no occasion for male to blackmail his wife and it is not clear what goal he could have achieved by blackmailing her.
- 32.** One more fact assumes importance which petitioner raised in his petition regarding medical condition of the complainant. Divorce petition filed with the petition as Annexure A/2 is complete set of allegations regarding medical condition of respondent No.2. She not only having mercurial temperament and fought with the petitioner, his seniors, their wives and petitioner's fellow officers but also intimidated the petitioner to get conceived with his fellow officer, if petitioner does not succumb to her demand. She also levelled the allegation in her FIR against integrity of petitioner and as per

allegation petitioner was having illicit relationship with other females. Presumably, disturbed by her disposition, petitioner filed the divorce petition because all these acts, according to petitioner constituted mental cruelty.

33. When divorce petition was filed on 25-09-2020 at Family Court Etawah (U.P.) and notice was issued to the complainant then instead of appearing in the case she avoided mediation proceedings and as counterblast lodged this FIR to wreak vengeance.
34. Another interesting twist in the case is that during pendency of the petition, on 09-02-2023 respondent No.2 has filed an application under Section 9 of the Act of 1955 for restitution of conjugal rights before the Family Court, Gwalior bearing RCS HMNo.188/2023.If she wanted to re-enter into married relationship with petitioner then why she did not withdraw the allegations as made in FIR. All these proceedings indicate that domestic dispute exists between the parties because of non compatibility and being infuriated by divorce petition filed by petitioner, the complainant (respondent No.2) initiated all this spree of litigations.
35. In the case of **Umang Singhar (supra)**, this Court has discussed in detail about the impact of amended provisions of Section 375 of IPC (as amended in 2013) vis-a-vis Section 377 of IPC and while

considering the view taken by the Constitutional Bench of Supreme Court in the case of **Navtej Singh Johar and others (supra)**, held that in such circumstances (which are existing in the present case also) no offence under Sections 376 and 377 of IPC is made out. As per the submission of counsel for the petitioner, said judgment in Umang Singhar attained finality. Some extracts of the said judgment are worth consideration:

*“21. At this point, if the amended definition of Section 375 is seen, it is clear that two things are common in the offence of Section 375 and Section 377 firstly the relationship between whom offence is committed i.e. husband and wife and secondly consent between the offender and victim. As per the amended definition, if offender and victim are husband and wife then consent is immaterial and no offence under Section 375 is made out and as such there is no punishment under Section 376 of IPC. For offence of 377, as has been laid down by the Supreme Court in re Navtej Singh Johar (supra), if consent is there offence of Section 377 is not made out. At the same time, as per the definition of Section 375, the offender is classified as a 'man'. here in the present case is a 'husband' and victim is a 'woman' and here she is a 'wife' and parts of the body which are used for carnal intercourse are also common. The offence between husband and wife is not made out under Section 375 as per the repeal made by way of*

*amendment and there is repugnancy in the situation when everything is repealed under Section 375 then how offence under Section 377 would be attracted if it is committed between husband and wife.*

*22. In other way, the unnatural offence has not been defined anywhere, but as has been considered by the Supreme Court in the case of Navtej Singh Johar (supra) that any intercourse, not for the purpose of procreation, is unnatural. But respectfully I find that when same act as per the definition of Section 375 is not an offence, then how it can be treated to be an offence under Section 377 IPC. In my opinion, the relationship between the husband and wife cannot be confined to their sexual relationship only for the purpose of procreation, but if anything is done between them apart from the deemed natural sexual intercourse should not be defined as 'unnatural'. Normally, sexual relationship between the husband and wife is the key to a happy connubial life and that cannot be restricted to the extent of sheer procreation. If anything raises their longing towards each other giving them pleasure and ascends their pleasure then it is nothing uncustomary and it can also not be considered to be unnatural that too when Section 375 IPC includes all possible parts of penetration of penis by a husband to his wife.*

*23. Exempli gratia - if sexual intercourse for procreation via penile-vaginal penetrative intercourse is considered to be natural sex and sexual relations of*

*husband and wife is confined to that extent then in case if any husband or wife is not capable of procreation, then seemingly their relationship would become useless, but it does not happen. The conjugal relationship between husband wife includes love that has intimacy, compassion and sacrifice, although it is difficult to understand the emotions of husband and wife who share intimate bond, but sexual pleasure is integral part of their relentless bonding with each other. Ergo, in my opinion, no barrier can be put in alpha and omega of sexual relationship between the husband and his wife. Thus, I find feasible that in view of amended definition of Section 375, offence of 377 between husband and wife has no place and as such it is not made out.”*

36. Later on, another Coordinate Bench in the case of **Manish Sahu (supra)** also quashed the FIR in almost similar fact situation. This Court is supported by these judgments. So far as the plea of abortion as done at the instance of petitioner and other co-accused is concerned, same lacks merit because by the medical opinion given by Dr. Sanchita Biswas, Consultant Gynaecologist & Obstetrician of Kailash Hospital Ltd. wherein she opined before Women Police Station, Padav District Gwalior vide her letter dated 01-03-2021 filed as one of the Annexures at page 159 in Cr.R.No.2595/2022 in which doctor has specifically opined that in view of ultrasound

(USG) report which showed early pregnancy failure, patient was advised for medical abortion on 23-12-2019 and follow up after 10 days. However patient did not turn up to the doctor after advise. Therefore, contention of complainant gets falsified by the said medical opinion. Cause of abortion was not marpeet or physical violence done by accused.

37. In view of the above submissions, offence under Section 377 of IPC is not made out at all and therefore, it is established that these allegations are false and fabricated just to implicate the petitioner.

**Regarding Other Allegations:**

38. So far as allegation of dowry demand and subsequent harassment is concerned, all allegations are omnibus in nature. No specific dates and events have been given by the complainant. She only refers allegations about demand of Fortuner Car. Looking to the conduct of complainant which compelled the petitioner to write letter dated 11-12-2020 to the Police Station Jalukie, Nagaland about mental condition and suicidal tendency of the complainant and different counseling sessions held by senior officers of petitioner for mercurial behaviour of complainant, there is no iota of doubt that it is an afterthought. All allegations precipitated after filing of divorce petition. Prior to it she never made any allegation of harassment for

dowry demand. She has also filed an application under Section 12 of the Act of 2005 before the JMFC, Gwalior on 22-06-2021 which is pending consideration. All these proceedings are subsequent to complaints made by petitioner and divorce case filed.

39. When bouquet of cases like Domestic Violence Act, Section 498-A of IPC, Sections 9 and 13 of the Act of 1955 and FIR under Sections 354 and 377 of IPC are registered then one has to tread cautiously because allegations may precede with malice and to wreak vengeance. **“Couple when shares nuptial bliss, has the propensity to transcendent relation into another dimension but when shares non compatibility then they are worst enemies”**.
40. The Hon'ble Apex Court in the matter of **Preeti Gupta Vs. State of Jharkhand, (2010) 7 SCC 667** and **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another, (2012) 10 SCC 741** has considered all the aspects of such frivolous allegations and concluded that in those matters false allegations are levelled to settle the score and to rope all the family members of bride groom. In the case of **Preeti Gupta (supra)** the Apex Court held as under:

*“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the Courts in our country including this Court are flooded with*

*matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the Society.*

*31. The Courts are receiving a large number of cases emanating from Section 498-A of the Penal Code which reads as under:*

*“498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

***Explanation.-** For the purpose of this Section, 'cruelty' means-*

*(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

*34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can*



*lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*

*35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegation of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.”*

41. Therefore, in the present facts and circumstances of the case, allegations of dowry demand is false and fabricated. It is an after thought *vis-a-vis* complaints made by petitioner.

**Regarding brother-in-law, father-in-law and mother-in-law**

42. In the case in hand father-in-law and mother-in-law are aged 60 years and 56 years respectively who are working as LIC agents at Etawah and due to non compatibility between couple they have been

falsely implicated in the matter. General and vague allegations have been levelled only for the purpose of over implication. Petitioners of Cr.R.No.2595/2022 filed certain documents vide Annexure A/8 at page 235 wherein on 05-11-2019 petitioners were at Agra for the purpose of treatment of Smt. Kusumlata Pathak at Bone Hospital, Agra. Therefore, allegations in respect of miscarriage/abortion allegedly caused to complainant on 05-11-2019 is not correct. It is highly improbable that other accused persons could have increased the misery of complainant. Abortion of complainant was given the colour of deliberate miscarriage at the instance of in-laws of which no complaint was made on any prior date and even no charge was framed of causing miscarriage by the trial Court and respondent No.2 never challenged such non framing of charge.

**43.** Complainant lived either at different field postings of petitioner or when she was not with petitioner then at her maternal home at Bhind with her parents then petitioners had no occasion to harass her for dowry demand. In the conspectus of overall facts and circumstances of the case, it appears that complainant tried to implicate the petitioners just to exert pressure over her husband to succumb.

**44.** Even otherwise brother-in-law of complainant namely Sumit Pathak

is a technical man (System Analyst), lives either at Noida (U.P.) or Pune (Maharashtra), therefore, his separate living even before marriage of his brother with complainant indicates that he had no role to play for dowry demand. Interestingly, in the case of Domestic Violence Act, no allegation has been levelled by the complainant against brother-in-law (Sumit Pathak) and he is not party to the said proceedings. However, in the present case, just to harass the family members these allegations have been levelled.

45. Another aspect deserves consideration is nature of statement under Sections 161 and 164 of father and brother of respondent No.2 and other witnesses like Rajkumar Gupta, Rajendra Tiwari, Narendra Pachori and Neetu Pathak. All made their statements verbatim and in same fashion. Therefore, it appears that a stereotype allegations have been levelled just to harass the petitioners and his husband and shoddy investigation carried out, just to implicate them.
46. The Apex Court in the case of **Vineet Kumar and others Vs. State of Uttar Pradesh and another, (2017) 13 SCC 369** and in the case of **Mohd. Wajid Vs. State of U.P. & Ors. 2023 LiveLaw (SC) 624** held that in exercise of inherent power under Section 482 of Cr.P.C. or extraordinary jurisdiction under Article 226 of the Constitution, the Court owes a duty to look into the FIR with care and a little

more closely. Apex Court expected that Constitutional Court should interfere in the interest of justice if required, in such matters. Here, proceedings are manifestly frivolous, vexatious and initiated with ulterior motive to wreak vengeance.

47. Hon'ble Apex Court in the matter of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** laid down the different exigencies under which interference under Section 482 of Cr.P.C. can be made. Following exigencies are as under:

- “(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;*
- (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;*
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

Thus, the present case falls and covered by exigencies No. (a), (e) and (g) as enunciated by Hon'ble Apex Court in the matter of **Ch. Bhajan Lal and others (supra)**. Therefore, this Court intends to invoke its extraordinary jurisdiction vested under Section 482 of

Cr.P.C. in all matters and in respect of all accused persons to meet the ends of justice.

48. This Court does not intend to burden the judgment with plethora of precedents but for brevity follows the guidelines from the Apex Court as well as Coordinate Bench of this Court to bring clarity to the issue. In cumulative analysis and after considering the facts and circumstances of the case, this Court deem it fit to invoke powers under Section 482 of Cr.P.C. in respect of all accused persons to meet the ends of justice and to do substantial and complete justice between the parties.
49. In view of the above discussion, this Court comes to the conclusion that no case is made out against petitioners namely Major Amit Pathak (husband), Sumit Pathak (brother-in-law), Sarvesh Chandra Pathak (father-in-law) and Smt. Kusumlata Pathak (mother-in-law) for trial. Case has been registered as counter-blast to the divorce proceedings because of domestic incompatibility between the parties. On the basis of medical evidence, no case is made out for offence under Section 377 of IPC even for trial and on the basis of omnibus allegations, petitioner cannot be permitted to suffer wrath of criminal proceedings for false allegations of demand of dowry  
**{See: State of Gujarat Vs. Kishanbhai and others, (2014) 5**

47 M.Cr.C.No.51674/22, Cr.R.No.2594/22, Cr.R.No.2595/22 & M.Cr.C.No.25093/23

**SCC 108}}**.

**50.** *Resultantly*, all petitions preferred by the petitioners bearing M.Cr.C.No.51674/2022, Cr.R.No.2594/2022, Cr.R.No.2595/2022 & M.Cr.C.No.25093/2023 are allowed. Impugned orders are hereby set aside. FIR registered at crime No.38/2021 at Police Station Mahila Thana Padav District Gwalior for the offence under Sections 498-A, 377, 354, 506, 34 of IPC and Section 4 of the DP Act against the petitioners are hereby quashed and all the petitioners are discharged from all the charges and allegations levelled against them.

**51.** Petitions stand **allowed and disposed of**.

**(Anand Pathak)**  
**Judge**

Anil\*