IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1291 of 2021

1. Mr. Mahesh Kumar Chaudhary
   @ Mahesh Choudhary
2. Smt. Mina Devi
3. Sh. Prem Kant Shekhar @ Tinku
4. Sh. Nishant Shekhar @ Golu
5. Ms. Sania Shekhar @ Shanya Shekhar
6. Sh. Prem Chandra Shekhar
   @ Prem Chand Shekhar ..... … Petitioners

Versus

1. The State of Jharkhand through
   Chief Secretary, State of Jharknand, Ranchi.
2. The Station House Officer, Mango Police Station,
   Jamshedpur, East Singhbum.
3. Ms Priyanka Jaiswal ..... … Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. H.K. Chaturvedi, Advocate.
: Mrs. Anjali Chaturvedi, Advocate.
For the State (O.P. Nos. 1 &2) : Mrs. Priya Shrestha, Spl.P.P.
For the O.P. No. 3 : Mr. A.K. Sahani, Advocate.

08/ 16.06.2022 Heard Mr. H.K. Chaturvedi along with Mrs. Anjali Chaturvedi, learned counsel appearing for the petitioners, Mrs. Priya Shrestha, learned Spl.P.P. for the State (O.P. Nos. 1 & 2) and Mr. A.K. Sahani, learned counsel appearing for the O.P. No. 3.

2. This petition has been filed for quashing of the FIR, being Mango P.S. Case No. 68 of 2021, including the order dated 03.04.2021, passed by the learned Judicial Magistrate, 1st Class, Jamshedpur, whereby six non-bailable warrants of arrest were issued against the petitioners, pending in that court.

The FIR was lodged by the O.P. No. 3 on 04.03.2021, alleging therein:-

> I, Priyanak Jaiswal (Father's name Sh. Pradeep Kumar Jaiswal, Resident of Flat no. Orient-2, R-63, Anantara, Ashiyana, Pardih, Mango, Jamshedpur) with Great Modesty submitting my grievance to you, which is described in the following paragraphs:
>
> (a) In the year 2018 when I was working as a Freelancer Artist (Acting, Modelling, etc.), at that time one person namely Prem Chand Shekhar (Father's name Sh. Mahesh Chaudhary, Resident of: Avistha 7d, Green Field Heights, New Town, Kolkata- 700156) communicated with me through the medium of online marriage portal i.e. Shaadi.com.
>
> (b) He conveyed to me through text messages and mobile that he

is doing a fine job in Frankfurt, Germany and earning Rs.70 to 80 lakhs yearly and thereafter only by telling this information he offered me the proposal of marriage.

(c) I have told him that it is not possible for me to leave my work at Mumbai and shift to Germany but he regularly made conversation with me and he made me believe that I will be free and independent to work even if I wish to after the marriage.

(d) I believed him and I got ready to marry him, thereafter, both the families have communicated and interacted with each other and in such interaction the mother and father of Prem Chand Shekhar has stated that We people don't want any kind of dowry either in the form of gift or cash in the marriage.

(e) After this, I got married to Prem Chand Shekhar on 05.10.2018 under the Special Marriage Act at 24 Pargana, Kolkata but again because of the social obligation, the marriage took place in front of guests and relatives on 18.01.2019 at one hotel (Citi Inn, Pardin, Jamshedpur).

(f) My Mother and Father have spent a sum of Rs. 60 lakhs from Engagement Ceremony till Marriage.

(g) After marriage on 03.02.2019 I alongwith my husband Prem Chand Shekhar went to Mumbai where my husband told me to get the Visa and come to Germany and he left for Frankfurt, Germany.

(h) On 10.02.2019, I went to my In-laws place at Kolkata after my In-laws asked me to come over at Kolkata, where my mother-in-law Mina Devi and father- in – law Mahesh Chaudhary have stated sarcastically that you havnt brought anything in dowry, they also stated that your mother father have promised us to give 50 lakhs cash, one car and one flat in Kolkata reason being your parents have to give this. For this reason my In-laws used to abuse me and the younger brothers of my husband i.e. Prem Kant Shekhar and Nishant shekhar and also the younger sister of my husband i.e. Sania Shekhar were also involved.

(i) Then I have informed my husband about the same but he was silent and didn't answer me.

(j) In between I have got my Visa and on 18.04.2019 I went to my husband at Frankfurt, Germany. My husband's behaviour was changed and he left me alone. When I asked him the reason behind acting so different then he told me that if my mother- father wont give 50 lakhs cash, one car and one flat in Kolkata, then he won't

have a relation with me.

(k) There he started abusing me everyday and harassed me in different ways. I have got this affirm confirmation that I have been frauded in the name of marriage. I was feeling mentally sick as my husband used to stay out of the house and I was very disturbed with my loneliness and whenever my husband used to stay at home, he used to harass me in mental and physical ways that It became hard for me to live.

(l) Under these circumstances I wished to start my career and upon this my husband has given his dissent and he stated that If I will start my career then he won't have a relationship with me.

(m) Therefore, for the sake of getting some peace, I wanted to came back to India and on 05.12.2019, I came back to India and directly went to my In-laws place in Kolkata.

(n) My Mother-in Law and Father-in-Law alongwith the whole family started the same misbehaviour with me and for the greed of dowry slowly they harassed me. Once my mother-in-law pushed me and I has a collusion with the wall. In another incident she (i.e. my mother-in-law) stated to me that why don't I die? Her aggression raised upon my silence and she choked my neck and stated if you don't die by your own then I will kill you and all this incident took place in the presence of my father-in-law and my brother- in-law Prem Kant Shekhar with their agreement. My father-in-law told me if you don't get the things (i.e. what has been asked for) then step out of my home.

(o) Somehow, I kept on tolerating this and in between, the date for my elder brother's engagement was fixed for 22.01.2020 in Padrauna city (Uttar Pradesh) and my whole family of in-laws along with my husband were duly invited and all of them attended the ceremony (officially, even my husband came to India to attend this function but in reality, he had to come to attend wedding of his very close friend.)

(p) After attending the function, my husband came with me and my whole family on 24.01.2020 to my house at Jamshedpur and after taking a bit of rest there, we went my father's place at Chandil. Then on 25.01.2020, I went with my husband to my in-laws house at Kolkata where my mother-in-law and father-in-law again ill-treated me in front of my husband and repeated their demand (i.e. Rs. 50 lacs, one car and a flat in Kolkata) and even threatened me on those

days that if these demands are not fulfilled, they will get their son married to someone else for which a party offering Rs. 1 crore is already ready with them. In course of these event, though my husband remained silent but he showed from his conduct and expressions that he is not happy with his parent's behavior.

(q) From 17.01.2020, I started feeling a positive change in my husband's behavior (i.e. from the date he came from Frankfurt to Kolkata) and since then only he had been time and again apologizing to me for his parent's misbehavior and he even explained to me separately regarding his parent's illegitimate demands that they are elder of the family and I should ignore and not care and give much attention to what they say. And once again, I was convinced with his sugar-coated talks and in February 2020, I went back to Frankfurt with him.

(r) Hardly after 2 to 4 days of reaching Frankfurt, my husband started showing his real colours again and started abusing and torturing me again. And this time he even started to beat me making demands of dowry and lying about a false promise done by my parents for giving dowry (i.e. Rs. 50 lacs, one car and one flat in Kolkata) and asking me to fulfil the same.

(s) I had no other option/alternative than living in loneliness and being abused and beaten. Apart from this, he even created such circumstances wherein I was forced to stay hungry for days due to which I got sick and during illness, forget about being medically treated, he did not even ask me about my condition and well-being. Due to this behavior, I was slowly breaking inside mentally as well.

(t) Suddenly, one day on 02.10.2020, he did not return to home from his office and freed himself just by sending a one line text message saying- 'I don't intend on coming back' and he has not returned to our home since then. He even blocked me from phone and whatsapp and through SMS only, I was able to send one or two message him whose reply was more or less given to me.

(u) I spent my whole month alone like this in thirst and hunger and going through illness. My elder brother's marriage was also coming close (which was fixed for 30.11.2020) and in this situation, I requested him though SMS to book my ticket to India to which though he did not book the ticket but transferred requisite amount to my bank account from which I booked the ticket and on 02.11.2020, I went to my in-laws house at Kolkata.

(v) That day at my In-laws lace only my sister-in- law Sania Shekhar and my brother-in-law Nishant Shekhar were present, who didn't allow me to enter the house and when I went inside the house by my means they both started abusing me and hit me, they were only trying me get me out of the home and I was resisting against their refusal and they couldn't get me out of the house. Then they both went outside by locking me inside the house and I got frightened and called my mother father for held. They came to Kolkata for getting me back to my parent's house. I called Sania to came back to house with the keys and she didn't pick the call, then I texted her, by some means I was able to talk to her and she didn't want to give the keys and for this she made several excuses and troubled my mother father. She didn't come but she sent the keys with the security guard and then the house got unlocked, only then I was able to come outside the house. In this manner my mother father took me back to my home at Jamshedpur and since then I am at my house at Jamshedpur and sometimes I go to meet my mother- father at my mother- father's home at Ghodaling (Chandil).

3. Learned counsel appearing for the petitioners submits that the petitioner No. 6 is the husband of complainant-O.P. No. 3 and he got married with O.P. No. 3 on 05.10.2018, under Special Marriage Act at Kolkata and, thereafter, as per Hindu rituals and customs, again married each other on 18.01.2019 at Jamshedpur. He submits that the petitioner No. 6 and O.P. no. 3 met earlier and relationship developed between them, and thereafter, they have entered into the marriage. He further submits that the O.P. No. 3 is currently residing at Sandweg 127, Frankfurt am Main 603616 at Germany and that apartment has been leased in the name of the petitioner No. 6 and the rent and bills of that apartment is being paid by the husband of the O.P. No. 3. He submits that the O.P. No. 3, now after marriage, never residing at Jamshedpur, as the parents of the petitioner No. 6 were residing at Kolkata and the rest of the family are also residing at Germany and what has been alleged in the FIR that has occurred, either at Kolkata or at Germany and the Jamshedpur is not having the territorial jurisdiction to lodge the FIR.

4. Learned counsel further submits that without complying the provisions under Chapter-VI of the Cr.P.C. and also without serving out the notice under Section 41-A of the Cr.P.C., the non-bailable warrants of arrest have been issued against the petitioners. He further submits that the petitioner Nos. 1 and 2 are the father-in-law and mother-in-law, who were

residing at Kolkata and they have been arrested on 17.06.2021 from Kolkata and they have been produced in the Court at Jamshedpur after 48 hours, however, application for bail was filed on behalf of them on 18.06.2021. He further submits that the allegations are omnibus and general against all the petitioners. He also submits that the petitioner Nos. 3 to 5 are the sister and brother of the petitioner No. 6 and they were also studying at Germany.

5. Learned counsel appearing for the petitioners has raised three points, (i) first point is that without serving of notice under Section 41-A of the Cr.P.C. that too in a case under Section 498-A, whether the non-bailable warrant of arrest can be issued in haste or not, (ii) Jamshedpur court is not having the territorial jurisdiction, as the alleged occurrence has taken place at Kolkata or at Germany and (iii) that the allegations are general and omnibus against the petitioner Nos. 1 to 5.

6. By way of elaborating his first point with regard to arrest of petitioner Nos. 1 and 2 and without serving a notice under Section 41-A of the Cr.P.C., he submits that procedures have been prescribed under Chapter-VI of the Cr.P.C., how the summons are required to be issued under Sections 62 and 65 of the Cr.P.C. He submits that Section 41-A notice was not served upon the petitioner Nos. 1 and 2 and in spite of that non-bailable warrants have been issued against them. He further submits that in that regard, direction has been issued from time to time by the Hon'ble Supreme Court as well as by the High Courts in Section 498-A matters, how to proceed for arrest. To buttress his arguments, he relied in the case of ***Arnesh Kumar Versus State of Bihar & Anr.***, reported in **(2014) 8 SCC 273**, wherein the Hon'ble Supreme Court in paras-5 and 11 held as follows:-

> ***"5.*** *Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources*

of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

11. *Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

11.1. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

11.2. *All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

11.3. *The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

11.4. *The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*

11.5. *The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.6. *Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.7. *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

11.8. *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action*

by the appropriate High Court."

7. By way of referring this judgment, Mr. Chaturvedi, learned counsel appearing for the petitioners submits that a clear guideline has been issued by the Hon'ble Supreme Court, how to proceed in cases under Section 498-A I.P.C.. He further submits that even the Supreme Court has observed that if this guideline is not followed, the contempt proceeding can be initiated against the erring officers in the respective High Courts. He further submits that without following the procedure, the petitioner Nos. 1 and 2 have been arrested from Kolkata and produced at Jamshedpur Court after 48 hours. He further submits that an application was moved on 18.06.2021 before the Jamshedpur Court and when the Court interfered, thereafter only the petitioner Nos. 1 and 2, who are old aged parents-in-law have been produced by the police after 48 hours. He submits that a counter affidavit has been filed by the State, wherein it has been disclosed that the Kolkata Police has not been taken into confidence and under which direction, the petitioners have been brought to Jamshedpur is one of the aspect, to be looked into by this Court. He further submits that this aspect of the matter has again been considered by the Hon'ble Supreme Court in the case of ***Social Action Forum for Manav Adhikar and Anr. Versus Union of India, Ministry of Law and Justice & Ors.,*** reported in **(2018) 10 SCC 443**, wherein the Hon'ble Apex Court in para-29 and 32 held as follows:-

> ***"29.*** *The Court further went on to say that: (Arnesh Kumar case, SCC pp. 280-81, para 10)*
>
> *"10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued."*
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> *The directions issued in the said case are worthy to note: (Arnesh Kumar case, SCC p. 281, para 11)*
>
> *"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to*

ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

***32.** In D.K. Basu v. State of W.B., after referring to the authorities in Joginder Kumar, Nilabati Behera v. State of Orissa and State of M.P. v. Shyamsunder Trivedi, the Court laid down certain guidelines and we think it appropriate to reproduce the same: (D.K. Basu case, SCC pp. 435-36, para 35)*

"(1) The police personnel carrying out the arrest

and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours

during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous noticeboard."

8. Learned counsel appearing for the petitioner further submits that in all over the country this is happening without following the due process of law, the persons have been arrested and considering this, the Division Bench of Delhi High court in the case of ***Amandeep Singh Johar Versus State of NCT of Delhi & Anr.***, in **W.P.(C) No. 7608 of 2016,** made a guidelines how to proceed in such matters. He refers to para-15 of the said judgment, which reads as under:-

"*15. We have heard Mr. Sanjay Jain, learned ASG and Mr. Satyakam, ASC, GNCTD on the aforesaid issues and the reports. Upon consideration of the report and the suggestions made by the parties under the leadership of the Worthy Registrar General and with their consent, it is directed that so far as working of Section 41A, the following procedure shall be strictly followed by the police in Delhi:*

Procedure for issuance of notices/order by police officers under Sections 41A

"(i) Police officers should be mandatorily required to issue notices under Section 41A CrPC (in the prescribed format) formally to be served in the manner and in accordance with the terms of the provisions contained in Chapter VI of the Code.

Model form of notice under Section 41A CrPC is reproduced herein below:

" MODEL SECTION 41A CrPC NOTICE

Sr.No.....

Police Station .....

To,
[Name of Accused/Noticee]
[Last Known Address]
[Phone No./Email ID (if any)]

Notice under Section 41(A) Cr.P.C.

In exercise of the powers conferred under subsection (1) of section 41A of Cr.P.C., I hereby inform you that during the investigation of FIR/Case No. ..... dated ..... u/s .....registered at SV & ACB Police Station ....., it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at ..... am/pm on ..... at .....Police Station.

You are directed to comply with all and/or the following directions :

(a) You will not commit any offence in future.

(b) You will not tamper with the evidences in the case in any manner whatsoever.

(c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.

(d) You will appear before the Court as and when required/directed.

(e) You will join the investigation of the case as and when required and will cooperate in the investigation.

(f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.

(g) You will produce all relevant documents/material required for the purpose of investigation.

(h) You will render your full co-operation/assistance in apprehension of the accomplice.

(i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/trial of the case.

(j) Any other conditions, which may be imposed by the Investigating Officer/SHO as per the facts of the case.

Failure to attend/comply with the terms of this

Notice, can render you liable for arrest under Section 41A(3) and (4) of CrPC.

[Signature]

[Name and Designation]

[affix seal]

.....

Sr.No. .....

ACKNOWLEDGEMENT

In compliance with the abovementioned notice dated ..... issued under Section 41A CrPC, the Noticee has appeared on ..... from ..... to ..... That the Noticee's presence has been recorded in the register to be maintained by the Police Station.....

This acknowledgement is being issued in compliance with Section 41A CrPC. The documents produced by the noticee have duly been seized vide seizure memo/production memo (copy enclosed).

The notice undertakes to continue to comply with any further notices that she/he may receive during the course of the present investigation.

[Signature of Accused] [Signature of IO]"

(ii) The concerned suspect / accused person will necessarily need to comply with the terms of the notice under section 41 A and attend at the requisite time and place.

(iii) Should the accused be unable to attend at the time for any valid and justifiable reason, the accused should in writing immediately, intimate the investigating officer and seek an alternative time within a reasonable period, which should ideally not accede a period of four working days, from the date on which he / she were required to attend, unless he is unable to show justifiable cause for such non-attendance.

(iv) Unless it is detrimental to the investigation, the police officer may permit such rescheduling, however only for justifiable causes to be recorded in the case diary. Should the investigating officer believe that such extension is being sought to cause delay to the investigation or the suspect / accused person is being evasive by seeking time, (subject to intimation to the SHO / SP of the concerned Police Station), deny such request and mandatorily require the said person to attend.

(v) A suspect / accused on formally receiving a notice under section 41A CrPC and appearing

before the concerned officer for investigation / interrogation at the police station, may request the concerned IO for an acknowledgement,

(vi) In the event, the suspect / accused is directed to appear at a place other than the police station (as envisaged under Section 41A(1)CrPC), the suspect will be at liberty to get the acknowledgement receipt attested by an independent witness if available at the spot in addition to getting the same attested by the concerned investigating officer himself.

(vii) A duly indexed booklet containing serially numbered notices in duplicate / carbon copy format should be issued by the SHO of the Police Station to the Investigating Officer. The Notice should necessarily contain the following details:

a Serial Number
b Case Number
c Date and time of appearance
d Consequences in the event of failure to comply
e Acknowledgment slip

(viii) The Investigating Officer shall follow the following procedure:

a The original is served on the Accused/Suspect;

b A carbon copy (on white paper) is retained by the IO in his / her case diary, which can be shown to the concerned Magistrate as and when required;

c Used booklets are to be deposited by the IO with the SHO of the Police Station who shall retain the same till the completion of the investigation and submission of the final report under section 173 (2) of the Cr.P.C.

d The Police department shall frame appropriate rules for the preservation and destruction of such booklets

(ix) Procedure booklets in format identical to the above prescription in guideline (vii) & (viii) with modifications having regard to the statutory provisions in the forms for the notices and acknowledgment shall be maintained.

(x) Failure on the part of the IO to comply with the mandate of the provisions of the Cr.P.C and the above procedure shall render him liable to appropriate disciplinary proceedings under the applicable rules and regulations as well as contempt of Court in terms of the directions of the Hon'ble Supreme Court in the case of Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273.

(xi) Publicity should be undertaken and pamphlets educating the public at large, should be issued by

the DCP of all Districts.
(xii) The above information should be displayed at prominent places in Police stations, the subordinate courts and the High Court and made available to with the State and District Legal Services Authorities, to inform the public of their rights and recourses available to them.
(xiii) Training programmes be specially formulated for Police Officers and Judicial Officers to sensitize them towards effective compliance of Section 41A, 91, 160 and 175 of the CrPC."

9. He further relied in the case of ***State through CBI Versus Dawood Ibrahim Kaskar & Ors.***, reported in **(2000) 10 SCC 438**, wherein the Hon'ble Supreme Court in para-24 held as follows:-

"24. *Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr Desai was not absolutely right in*

his submission that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of the accused before the police in aid of investigation."

10. Relying on these judgments, Mr. Chaturvedi submits that if the violation is there and without following the procedure of law that too in a case under Section 498-A of Indian Penal Code is in violation of the procedure, prescribed under the law for that the erring officer is required to be dealt with in terms of the observation of the Hon'ble Supreme Court in the case of ***Arnesh Kumar (Supra).***

11. By way of referring certain paragraphs of the FIR, Mr. Chaturvedi submits that the marriage was done through *Shaadi.com* and discussion was made for marriage and he submits that the marriage has taken place on 05.10.2018 under the Special Marriage Act at Kolkata and thereafter social marriage was solemnized as per Hindu rituals and customs on 18.01.2019 at Jamshedpur. He further submits that in para-4 of the written report, it has been disclosed that there was no demand of dowry and in para-7, it has come that the complainant came back to Mumbai along with her husband and went to Germany. By way of referring para-8 he submits that certain vague allegations have been made regarding comments. It has been admitted in para-10 that she went to Germany on 18.04.2019. He further submits that to attend the marriage ceremony of her brother, she came to India and lodge the FIR at Jamshedpur. He submits that the entire allegations are happened at Kolkata and Germany and that's why, Jamshedpur Court is not having the jurisdiction.

12. By way of elaborating his argument, he submits that in the case in hand, the O.P. no. 3 was not thrown away from the house and she was not residing along with her parents at Jamshedpur and in this background even considering the recent judgment of Hon'ble Supreme Court in the case of ***Rupali Devi Versus State of Uttar Pradesh & Ors.,*** reported in **(2019) 5 SCC 384**, the Jamshedpur Court is having no jurisdiction as she was not residing at Jamshedpur, rather she was residing at Germany in the flat owned/ leased out by the husband of the O.P. No. 3.

13. On the point of territorial jurisdiction, he relied in the case of ***Manoj Kumar Sharma & Ors. Versus State of Chhattishgarh & Anr.,*** reported in **(2016) 9 SCC 1**, wherein the Hon'ble Supreme Court in paras-23 and 37 held as follows:-

"23. *The learned Senior Counsel for the appellants vehemently contended that Police Station Bhilai*

Nagar, Durg had no territorial jurisdiction to investigate the matter alleging commission of offence under Sections 304-B and 498-A IPC because none of the part of the alleged offence was committed within the territorial jurisdiction of Police Station Bhilai Nagar, Durg. It is true that territorial jurisdiction also is prescribed under sub-section (1) of Section 156 to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170 CrPC.

***37.** In the case on hand, malicious prosecution was instituted by the brother of the deceased after a period of five years that too on the basis of anonymous letters. There was no accusation against the appellants before filing of the FIR. The allegations are vague and do not warrant continuation of criminal proceedings against the appellants. Also, the court at Durg has no territorial jurisdiction because cause of action, if any, has arisen in Ambala. The criminal proceeding is grossly delayed and a result of belated afterthought. The High Court failed to apply the test whether the uncontroverted allegations as made prima facie, establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. The High Court did not apply its mind judiciously and on an incorrect appreciation of record, ordered for continuance of the investigation on a petition under Section 482 of the Code. This power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results."*

14. By way of relying this judgment, he submits that since the cause of action has not arisen at Jamshedpur, the FIR was not required to register at Jamshedpur. He further relied in the case of ***Y. Abraham Ajith & Anr. Versus Inspector of Police, Chennai & Anr.***, reported in **(2004) 8 SCC 100,** wherein the Hon'ble Apex Court in paras-12 and 19 held as under:-

***"12.** The crucial question is whether any part of the*

cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

19. *When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to Respondent 2 who, if she so chooses, may file the same in the appropriate court to be dealt with in accordance with law. The appeal is accordingly allowed."*

15. Lastly he relied in the case of ***Jay Prakash & Ors. versus State of M.P. & Anr.*** in **M.Cr.C. No. 7795 of 2016**, wherein the High Court of Madhya Pradesh in para-6 held as follows:-

"6. Be that as it may, after having gone through the elaborate complaint filed by respondent No.2, no primafacie case is made out at all against the petitioners No.4 and 5 in this case who are the sisters in law of the Respondent No.2. The petitioner No.4 is staying with petitioners No.1 to 3, but the allegation against her are peripheral, half-hearted and appear to have been levelled in order to rope her in order to bring pressure to bear upon the petitioner No.1. As regards petitioner No.5, it is admitted position in the complaint itself that the petitioner No.5 would occasionally come there and commit cruelty with respondent No.2 and that the petitioner No.5 is a married lady staying with her husband in the state of Gujarat. As regards the petitioners No.4 and 5, the complaint seems to be ex-facie malicious and the same is quashed on merits. As regards the petitioner No.1, the Ld. Counsel for the Respondent No.2 has submitted that looking at the alleged admission made by the Petitioner No.1 in the letter dated 07/09/13 in which it is alleged that the petitioner No.1 has given an undertaking that he shall not beat respondent No.2 in the future, which according to the learned counsel for respondent No.2 is an admission of fact that he used to indeed beat her in the past, it cannot be said that the allegations against the Petitioner No.1 is completely devoid of merit. Without dwelling upon the same or passing an order on merits, as regards the petitioners No.1 to 3, the case against them is quashed on account of lack of jurisdiction for the Police at Jabalpur to have investigated the said case and the Court at Jabalpur to try the same, as undisputedly, all the acts of matrimonial violence have

been committed by the petitioners No.1 to 3 at Indore and so is the demand for dowry."

16. Relying on these judgments, he submits that the cause of action has not arisen at Jamshedpur and it is beyond the jurisdiction of the Jamshedpur Court to lodge the FIR at Jamshedpur.

17. Learned counsel appearing for the petitioners on the point of allegations submits that the same are omnibus and general in nature against the petitioner Nos. 1 to 5, he has repeated his arguments as referred (supra). He further submits that the allegations are omnibus and general against the petitioner Nos. 1 to 5 and the entire family has been roped in the case, which is against the mandate of law.

18. Mr. Chaturvedi, learned counsel appearing for the petitioners submits that now a days a trend has developed in the matrimonial dispute and unnecessarily the entire family members are dragged into and even the old aged parents are not spared. He submits that the case in hand, same is the situation, where the old parents-in-law are dragged in Section 498-A case. He submits that there is no *prima facie* case so far as the petitioner Nos. 1 to 5 are concerned. To buttress his arguments, he relied in the case of ***Geeta Mehrotra & Anr. Versus State of Uttar Pradesh & Anr.,*** reported in **(2012) 10 SCC 741**, wherein the Hon'ble Supreme Court in paras-18,19, 20, 21 and 28 held as follows:-

"18. *Their Lordships of the Supreme Court in Ramesh case had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.*

19. *Insofar as the plea of territorial jurisdiction is*

concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482 CrPC wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of IPC. The High Court has failed to exercise its jurisdiction insofar as the consideration of the case of the appellants is concerned, who are only brother and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court.

20. *Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.*

21. *It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p. 698, para 12)*

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live

peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

The view taken by the Judges in that matter was that the courts would not encourage such disputes.

28. *We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of Respondent 2 complainant without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings insofar as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal is accordingly allowed."*

19. Relying on this judgment, he submits that in 498-A matters, if only omnibus allegations are there and entire family has been roped in a false case, the High Court is required to quash the entire criminal proceeding under Section 482 Cr.P.C.

20. Learned counsel further relied in the case of ***Preeti Gupta & Anr. Versus State of Jharkhand & Anr.*** reported in **(2010) 7 SCC 667**, wherein the Hon'ble Supreme Court in paras-5, 14, 15, 20, 21, 24, 26, 37, 38 and 39 held as follows:-

"5. *According to the appellants, there was no specific allegation against both the appellants in the complaint. Appellant 1 had been permanently residing with her husband at Navasari, Surat*

(Gujarat) for the last more than seven years. She had never visited Mumbai during the year 2007 and never stayed with Respondent 2 or her husband. Similarly, Appellant 2, the unmarried brother-in-law of the complainant has also been permanently residing at Goregaon, Maharashtra. It was asserted that there is no specific allegation in the entire complaint against both the appellants.

14. *This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of court. Inherent power under Section 482 CrPC can be exercised:*

(i) to give effect to an order under the Code;

(ii) to prevent the abuse of process of court; and

(iii) to otherwise secure the ends of justice.

15. *Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice.*

20. *This Court had occasion to examine the legal position in a large number of cases. In R.P. Kapur v. State of Punjab this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:*

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

21. *This Court in State of Karnataka v. L. Muniswamy observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public*

purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

24. *In State of Haryana v. Bhajan Lal this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short "CrPC") under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)*

"(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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."

26. *This Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque-observed thus: (SCC p. 128, para 8)*

> *"8. ... It would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."*

37. *Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large*

number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

38. *We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society.*

39. *When the facts and circumstances of the case are considered in the background of legal principles set out in the preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed."*

21. By way of relying on this judgment, he submits that the Hon'ble Supreme Court has considered about the duty of the Bar and Bench also and held that it required to be restrained the social responsibility and obligation to ensure social fibre of family life. It has also been held that in the case of dowry, harassment matter of serious concern, but exaggerated version of small incidents should not be reflected in the criminal complaint. He submits that this judgment is also helping the petitioners.

22. Lastly he submits that on the point of omnibus allegations, he further relied in the case of ***Social Action Forum for Manav Adhikar and Anr. Versus Union of India, Ministry of Law and Justice & Ors.,*** reported in **(2018) 10 SCC 443**, wherein the Hon'ble Apex Court in para-4 held as follows:-

"4. *Regarding the constitutionality of Section 498-A IPC, in Sushil Kumar Sharma v. Union of India, it was held by the Supreme Court: (SCC pp. 285-87, paras 12 & 18-19)*

Provision of Section 498-A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se

> *invalidate a legislation. Hence plea that Section 498-A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework."*

23. By way of relying on this judgment, he submits that even the Supreme Court has concerned about the false allegation and also opined about the proper legislation and observed that till then the Court is required to take care of all such cases. On these grounds, he submits that entire criminal proceedings against the petitioners are fit to be quashed by this court.

24. Mr. Chaturvedi, learned counsel appearing for the petitioners submits that the divorce petition is going on in the Germany Court, in which only quantum is required to be fixed.

25. Per contra, Mr. A.K. Sahani, learned counsel appearing for the O.P. No. 3 submits that the marriage was solemnized on 05.10.2018 under the Special Marriage Act at Kolkata and thereafter social marriage was solemnized as per Hindu rituals and customs on 18.01.2019 at Jamshedpur. He submits that from 19.01.2019 to 02.02.2019, all remained in Kolkata. He further submits that from 03.02.2019 to 10.02.2019 the O.P. No. 3 has resided at Mumbai for the purpose of VISA and on 18.04.2019 she got the VISA and went to Germany. He further submits that on 05.12.2019, she returned back to attend the marriage of her brother. He further submits that the engagement ceremony took place in the State of U.P. on 22.01.2020, in which, all the petitioners have participated and they returned back to Kolkata on 24.01.2020. He further submits that the O.P. No. 3 returned back to Germany on 10.04.2021. He

submits that the FIR is not the encyclopedia that is the matter of investigation and the investigation is still going on and this Court on this ground may not interfere in the matter under Section 482 Cr.P.C.

26. To buttress his arguments, he relied in the case of ***Superintendent of Police, CBI and Ors. Versus Tapan Kumar Singh***, reported in **(2003) 6 SCC 175**, wherein the Hon'ble Supreme Court in para-23 held as follows:-

> ***"23.*** *The High Court also held that before conducting the search and seizure the mandatory requirement of Section 165 was not fulfilled inasmuch as the investigating officer did not record in writing the grounds for his belief as required by the said section. It is premature at this stage to consider whether search and seizure was done in accordance with law as that is a question which has to be considered by the court, if the accused is ultimately put up for trial and he challenges the search and seizure made. Similarly, the question as to whether the GD entry, or the FIR formally recorded on 20-10-1990, is the FIR in the case, is a matter which may be similarly agitated before the court. Where two informations are recorded and it is contended before the court that the one projected by the prosecution as the FIR is not really the FIR but some other information recorded earlier is the FIR, that is a matter which the court trying the accused has jurisdiction to decide. Similarly, the mentioning of a particular section in the FIR is not by itself conclusive as it is for the court to frame charges having regard to the material on record. Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charges."*

27. He further relied in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra & Ors.***, reported in **(2021) 3 JBCJ 10 (SC)**, wherein the Hon'ble Supreme Court in Para-23 held as follows:-

> *"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or no coercive steps to be adopted, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or no coercive steps to be adopted during the*

investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the

allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or no coercive steps to be adopted and the accused should be relegated to apply for anticipatory bail under Section 438

Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or no coercive steps either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of no coercive steps to be adopted within the aforesaid parameters, the High Court must clarify what does it mean by no coercive steps to be adopted as the term no coercive steps to be adopted can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

28. He submits that so far as the non-compliance of notice under Section 41-A Cr.P.C. is concerned that would be the concern of the State and that would be argued by the learned counsel appearing for the State.

29. Mrs. Priya Shrestha, learned Spl.P.P. appearing for the State (O.P. Nos. 1 and 2) by way of referring the counter affidavit, submits that all the procedures have been taken place and thereafter the petitioner Nos. 1 and 2 have been arrested and produced to the Court at Jamshedpur. She submits that the security guard of the apartment in question and the Local Police of Kolkata has not co-operated and that's why the Jamshedpur police has acted. She submits that there is no illegality in the entire investigation. She relied in the case of ***Rupali Devi Versus State of Uttar Pradesh & Ors.***, reported in **(2019) 5 SCC 384** and submits that this case is maintainable at Jamshedpur.

30. The O.P. No. 3 is residing at Germany in the house of her husband and the husband of the O.P. No. 3 has been ousted from the house and the entire expense of the house is being taken care of by the husband

of the O.P. No. 3.

31. In the light of the above submissions of learned counsel appearing for the parties, the Court has gone through the materials available on record. It is an admitted fact that the notice under Section 41-A of the Cr.P.C. has not been served upon the petitioners. The report was with regard to both the addresses that the doors were locked. The petitioner Nos. 1 and 2 were residing at Kolkata. Earlier, the police has also verified the address for the purpose of passport and it is well within the knowledge of the police that they are having two address one of the State of Bihar and another at Kolkata. However the police has sent the notices under Section 41-A Cr.P.C. upon both the addresses, i.e. at the Bihar address and also at the old address of Kolkata, but in the report, it has been reported that both the addresses were found locked. However, it has been disclosed that petitioner Nos. 1 and 2 have changed their flat, that's why Section 41-A Cr.P.C. has not been served upon them, however, the new address is well known to the police. The police by way of filing the application got the non-bailable warrants of arrest against the petitioners. It was incumbent upon the police that if the notice under Section 41-A Cr.P.C. was returned, at least it is required to be pasted at a conspicuous place, which has not been done in the case in hand.

32. Time and again the Hon'ble Supreme Court as well as the High Courts have issued the guidelines how to proceed in the case under Section 498-A of the Indian Penal Code as has been made in the case of ***Arnesh Kumar (Supra).*** The '*principle of bail is rule and jail is an exception'* and now a days this has been changed by the police, wherein the realty is '*the jail is rule and the bail is an exception'*. Now a days, the people are being arrested because the police is having the power and without application of mind that too in a case of Section 498-A of the Indian Penal Code, then the role of Article-21 of the Constitution of India comes into play.

33. When this Court queried the learned counsel appearing for the State about producing the petitioner Nos. 1 and 2, who are old aged persons after 48 hours in the Court, that too when a bail application was moved on their behalf on 18.06.2021, she has not been able to reply the same. The petitioner Nos. 1 and 2, who happens to be the father-in-law and mother-in-law, having been arrested without aid of the local police at Kolkata, how the Jamshedpur police had arrested the petitioner Nos. 1 and 2 at Kolkata and brought them to the Jamshedpur Court without any command of Kolkata police, is required to be looked into and admittedly

as disclosed in the counter affidavit that the Kolkata police has not been taken into confidence and the Jamshedpur Police on its own, arrested the petitioner nos. 1 and 2, who are old aged parents-in-law. Thus, the liberty of the petitioner nos. 1 and 2 is taken arbitrarily, and if the liberty is taken arbitrarily, the Constitutional Courts are required to deal it with iron hands. Thus, it has been held that the non-bailable warrants against all the petitioners have not been issued in accordance with law and the petitioner nos. 1 and 2 have been arrested without following the procedure of law, moreover they were required to produce within 24 hours and they have not been produced within that time and only after filing of the bail application, they have been produced after 48 hours and for this lapse on behalf of the police, where the liberty of two old aged persons has been taken away why the State will not compensate them for such illegal acts, is a question left open. The guidelines of arrest have not been followed in light of the judgments (Supra).

34. Section 498-A of the Indian Penal Code was again considered by the Hon'ble Supreme Court in the case of ***Rajesh Sharma & Ors. Versus State of Uttar Pradesh & Anr.,*** reported in **(2018) 10 SCC 472**, wherein at para-19, guidelines have been issued as under:-

> ***"19.*** *Thus, after careful consideration of the whole issue, we consider it fit to give the following directions:*
>
> ***19.1*********.*** *In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.*
>
> ***19.2.*** *The Committees may be constituted out of paralegal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.*
>
> ***19.3.*** *The Committee members will not be called as witnesses.*
>
> ***19.4.*** *Every complaint under Section 498-A received by the police or the Magistrate be referred to and looked into by such Committee. Such Committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.*
>
> ***19.5.*** *Report of such Committee be given to the*

authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

19.6. *The Committee may give its brief report about the factual aspects and its opinion in the matter.*

19.7. *Till report of the Committee is received, no arrest should normally be effected.*

19.8. *The report may be then considered by the investigating officer or the Magistrate on its own merit.*

19.9. *Members of the Committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.*

19.10. *The members of the Committee may be given such honorarium as may be considered viable.*

19.11. *It will be open to the District and Sessions Judge to utilise the cost fund wherever considered necessary and proper.*

19.12**.* *Complaints under Section 498-A and other connected offences may be investigated only by a designated investigating officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today.*

19.13***.* *In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior judicial officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord.*

19.14**#.* *If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed.*

19.15. *In respect of persons ordinarily residing out of India impounding of passports or issuance of red corner notice should not be a routine.*

> ***19.16.*** *It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the court to whom all such cases are entrusted.*
>
> ***19.17.*** *Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by videoconferencing without adversely affecting progress of the trial.*
>
> ***19.18.*** *These directions will not apply to the offences involving tangible physical injuries or death."*

35. In the light of the arguments of learned counsel appearing for the petitioners as well as the opposite parties, now the court is required to look into the territorial jurisdiction as argued by the learned counsel appearing for the petitioners. The Full Bench of Hon'ble Supreme Court in the case of of ***Rupali Devi Versus State of Uttar Pradesh & Ors***., reported in **(2019) 5 SCC 384**, wherein the Hon'ble Supreme Court in para-16 held as follows:-

> ***"16.*** *We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code."*

36. In para-16, the Hon'ble Supreme Court has held that if the wife is ousted from the house and residing along with her parents at that particular place also, she is entitled to file a case. In the case in hand, it is an admitted fact that O.P. No. 3 is residing at Germany that too in the house of her husband and now the expenses for that house has been taken care of by the petitioner No. 6, who is the husband of O.P. No. 3 and she is not residing at Jamshedpur along with her parents.

37. On perusal of the letter dated 29.04.2021, which is addressed to the CEO and Chairman of the Executive Court of the Company (Deutsche Borse AG) by the O.P. No. 3, where the husband of the O.P. No. 3 is working, it transpires that she has communicated for filing of the case at Jamshedpur, wherein the address of the O.P. No. 3 is shown as Sandweg 127, Frankfurt am Main 603616 at Germany. After receiving of this letter, the petitioner came to know about the filing of the case at Jamshedpur.

Looking into the written statement submitted before the police up to para-6, it has been disclosed that how the marriage has taken place. It is an admitted fact that the petitioners are having the home at Kolkata and Germany. It has been disclosed that the petitioner Nos. 3 to 5 are pursuing their studies at Germany and in the entire complaint, only omnibus and general allegations are there against the petitioner Nos. 1 to 5. Looking into the written statement and the allegations disclosed therein is either happened at Kolkata or at Germany, thus even assuming that if the allegations are correct, the court at Germany and Kolkata are having the jurisdiction and not at Jamshedpur, in view of the fact that the O.P. No. 2 has not been thrown from the house, rather she is residing in the house of her husband at Germany as has been held in the cases of ***Manoj Kumar Sharma (Supra)*** and ***Rupali Devi (Supra).*** Thus, the Jamshedpur police was having no jurisdiction to lodge the FIR.

38. So far as the argument of learned counsel appearing for the petitioners on the point of omnibus allegations are concerned, looking into the contents of the FIR, it transpires that the marriage was solemnized through *Shaadi.com*. In para No. 2 there is discussion of respondent No.3 and petitioner no. 6 regarding their marriage and income. It has been disclosed in Para-3 about the marriage and living life after the marriage with husband and wife. No concern with the any family member. In para-4, it has been admitted by the complainant regarding no demand of dowry. The marriage taken place on 05.10.2018 under the Special Marriage Act in Kolkata and social marriage was solemnized in Jamshedpur on 18.01.2019. In para-7, it has been disclosed that complainant came back to Mumbai and petitioner husband went to Germany. There are certain vague allegations against the parents regarding comments and irony statements made by parents-in-law and during such discussion, it is alleged that petitioners No. 3 to 5 were also become spectator. Intimation with husband has stated in para-9. In para 10 it has been disclosed that the O.P. No. 3 went to Germany on 18.04.2019 to live along with her husband in her matrimonial home. There are vague allegations against the husband in Germany. The statement of return to India at Kolkata on 05.02.2019. There are vague allegations against the parents without any specific date, time etc. or without any medical record for any physical assault by mother-in-law in para-14 of complaint. In para-16 there is no allegation against husband but only vague allegations against parents in law are stated. In para-17 it has been admitted by the complainant that all earlier misunderstandings were clarified by her husband and she happily went to

Germany along with her husband in the month of February, 2020, without any complaint. There are discussion in para-22 of going back to Ghodaling (Chandil) Jamshedpur from Kolkata after few vague allegations against the brother and sister of husband but not for any cruelty and dowry etc.

Thus it is clear that the allegations are omnibus and general against the petitioner Nos. 1 to 5.

39. On the point of 498-A, the judgments relied by learned counsel appearing for the petitioners are very clear. It is well known that Section 498-A of the IPC, complaint was being filed in the heat of the moment, however, in the case in hand, the husband of the O.P. No.3 is ousted from the house at Germany, wherein the O.P. No. 3 is residing and the entire expenses of rent and other bills are being paid by the husband of O.P. No. 3. The tendency of implicating the husband and all the near relatives are now common in these days. In some of the case, even after conclusion of the criminal trial, it is also difficult to ascertain the truth.

40. In the judgments relied by learned counsel appearing for the petitioners with regard to Section 498-A of the IPC matters, it clearly demonstrates that the court has at numerous instances to express concern over Section 498-A. The petitioner Nos. 3 to 5, who are brothers and sister of petitioner No. 6, are residing at Germany and only omnibus allegations are there, who are pursuing their studies there and they have been made accused.

41. Looking into the FIR, it transpires that there are general and omnibus allegations against the petitioners, except petitioner No. 6, who is husband of the O.P. No. 3. No specific and distinct allegation has been made against the petitioner Nos. 1 to 5 and in view of that it would be unjust, if the petitioners have put to the trauma of trial. On the point of territorial jurisdiction, the case of petitioner No. 6, who is husband of the O.P. No. 3 also succeeds.

42. In view of the above facts, reasons and analysis, it is held that the petitioner Nos. 1 and 2 were arrested without following the due process of law and the Jamshedpur Court is having no jurisdiction and in view of Para-16 of the case of ***Rupali Devi (Supra)***, as such the FIR is also not maintainable at Jamshedpur.

43. Accordingly, the FIR, being Mango P.S. Case No. 68 of 2021, including the order dated 03.04.2021, passed by the learned Judicial Magistrate, 1st Class, Jamshedpur, whereby six non-bailable warrants of arrest were issued against the petitioners, pending in that court, are hereby quashed.

44. Since it has been held that in this case how the petitioner nos. 1 and 2 have been arrested without following the due process of law, this Court feels that the State of Jharkhand come forward with certain guidelines so that in such matters, which is trivial in nature, the innocent people may not be arrested only due to highhandedness of the police.

45. The State of Jharkhand can look into the guidelines of the Delhi Police and as held by the Division Bench of the Delhi High Court, which has been dealt hereinabove, so that the Jharkhand Police may act in accordance to that guideline and in future, the Jharkhand Police may be referred as a Model Police.

46. Let a copy of this order be communicated to the Chief Secretary, Home Secretary, Director General of Police, Jharkhand to look into the observation made hereinbabove and to consider to frame / adopt such guidelines.

47. This Court hope and trust that the higher authorities of the State of Jharkhand will consider this in its right perspective and in a positive way.

48. With the aforesaid observations and directions, this petition is allowed and disposed of.

49. Interim order, granted earlier, stands vacated.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-