Social Action Forum vs Union Of India And Ors. Minstry Law And ... on 14 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4273, AIR 2019 SC(CRI) 35, (2018) 3 CRILR(RAJ) 857, (2019) 1 WLC(SC)CVL 420, (2019) 3 MH LJ (CRI) 476, (2018) 4 PAT LJR 167, (2018) 4 MAD LJ(CRI) 426, (2018) 72 OCR 1, (2019) 1 BOMCR(CRI) 1, 2019 (1) SCC (CRI) 276, (2018) 4 RECCRIR 226, (2018) 11 SCALE 191, (2018) 4 KER LT 965, 2018 CRILR(SC&MP) 857, 2018 CALCRILR 4 450, (2018) 6 BOM CR 539, (2018) 4 ALLCRILR 1, (2018) 2 ALD(CRL) 909, 2018 CRILR(SC MAH GUJ) 857, (2019) 106 ALLCRIC 701, (2018) 3 CRIMES 503, (2019) 194 ALLINDCAS 129 (SC), (2018) 3 DMC 525, (2018) 252 DLT 175, (2018) 3 GUJ LH 140, (2018) 4 JLJR 129, 2018 (10) SCC 443, AIRONLINE 2018 SC 167, AIR 2018 SC 4273, 2018 (4) AJR 720 (2018) 4 CGLJ 11, (2018) 4 CGLJ 11

Author: Dipak Misra

Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 73 OF 2015

Social Action Forum for Manav Adhikar ...Petitione
and another

VERSUS

Union of India
Ministry of Law and Justice and others …Respondent(

WITH

CRIMINAL APPEAL NO. 1265 OF 2017

WRIT PETITION (CRIMINAL) NO. 156 of 2017

JUDGMENT

Dipak Misra, CJI Law, especially the criminal law, intends to control, if not altogether remove, the malady that gets into the spine of the society and gradually corrodes the marrows of the vertebrae of a large section of the society. A situation arises and the legislature, expressing its concern and responsibility, adds a new penal provision with the intention to achieve the requisite result. When a sensitive legal provision is brought into the statute book, the victims of the crime feel adequately safe, and if the said provision pertains to matrimonial sphere, both the parties, namely, wife and husband or any one from the side of the husband is booked for the offence and both the sides play the victim card. The accused persons, while asserting as victims, exposit grave concern and the situation of harassment is built with enormous anxiety and accentuated vigour. It is propounded in a court of law that the penal provision is abused to an unimaginable extent, for in a cruel, ruthless and totally revengeful manner, the young, old and relatives residing at distant places having no involvement with the incident, if any, are roped in. Thus, the abuse of the penal provision has vertically risen. When the implementation of law is abused by the law enforcing agency, the legislature introduces a protective provision as regards arrest. Needless to say, the courts have ample power to grant pre-arrest bail or popularly called anticipatory bail and even to quash the criminal proceeding totally to stabilize the lawful balance because no court of law remotely conceives of a war between the two sexes. The courts remain constantly alive to the situation that though no war takes place, yet neither anger nor vendetta of the aggrieved section should take an advantage of the legal provision and harass the other side with influence or espousing the principle of sympathy. The role of the law enforcing agency or the prosecuting agency is sometimes coloured with superlative empathy being totally oblivious of the sensation to make maladroit efforts to compete with the game of super sensitivity. Such a situation brings in a social disaster that has the potentiality to vertically divide the society. The sense of sensitivity and the study of social phenomenon are required to be understood with objectivity. In such a situation, it is obligatory on the part of the legislature to bring in protective adjective law and the duty of the constitutional courts to perceive and scrutinize the protective measure so that the social menace is curbed. We are, in the instant matters, focussing on Section 498-A of the Indian Penal Code, 1860 (for short, „the IPC).

2. Section 498-A was brought into the statute book in the year 1983. The objects and reasons for introducing Section 498-A IPC can be gathered from the Statement of Objects and Reasons of Criminal Law (Second Amendment) Act of 1983 and read as under :-

> "The increasing number of Dowry Deaths is a matter of serious concern. The extent of evil has been commented upon by the Joint Committee of the Houses constituted to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore proposed to amend the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of Dowry Death but also cruelty to married woman by their in laws.

2. The following are the changes that are proposed to be made:-

(i) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable with an imprisonment for a term which may extend to three years and also with fine.

Willful conduct of such a nature by the husband or any other relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her, and harassment of woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty, the offence will cognizable if information relating to the commission of the offence is given to the officer in charge of a Police Station by the victim of the offence or a relative of the victim of the offence or, in the absence of any such relative, by any public servant authorized in this behalf by the State Government. It is also being provided that no court shall take cognizance of the offence except upon a Police Report or complaint made by the victim of the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or with the leave of the court by any other person related to her by blood, marriage or adoption (vide Clauses 2, 5 and 6 of the Bill.)

(ii) Provision is being made for inquest by Executive Magistrates and for postmortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence. Post-mortem is also being provided for in all cases where a married woman has died within seven years of her marriage and a relative of such woman has made a request in this behalf (vide Clauses 3 and 4 of the Bill)

(iii)The Indian evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from date of her marriage and it is shown that her husband or any relative of her husband and subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relative of her husband (vide Clause 7 of the Bill)

3. The Bill seeks to achieve the above objectives."

3. Regarding the constitutionality of Section 498-A IPC, in Sushil Kumar Sharma v. Union of India and others 1, it was held by the Supreme Court:-

"Provision of S. 498A 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 S. 498A 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 wreck 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 frame-work."

4. In B.S. Joshi and others v. State of Haryana and another 2, the Court observed:-

> (2005) 6 SCC 281 : AIR 2005 SC 3100 (2003) 4 SCC 675 : AIR 2003 SC 1386 "There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is eveiy likelihood that non-

exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code."

5. In Brij Lal v. Prem Chand and another3, this Court ruled thus:-

> “It would not be out of place for us to refer here to the addition of Sections 113-A and 113-B to the Indian Evidence Act and Sections 498-A and 304-B to the Indian Penal Code by subsequent amendments. Section 113-A Evidence Act and 498-A Indian Penal Code have been introduced in the respective enactments by the Criminal Law (Second amendment) Act, 1983 (Act 46 of 1983) and Section 113-B of the Evidence Act and 304-B Indian Penal Code have been introduced by Act No. 43 of 1986. The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113-A and 113-B in the Indian Evidence Act and Sections 498-A and 304-B in the Indian Penal Code. By reason of Section 113-A, the Courts can presume that the commission of suicide by a woman has been abetted by her husband or relation if two factors are present viz. (1) that the woman (1989) 2 SCR 612 had committed suicide within a period of seven years from her marriage, and (2) that the husband or relation had subjected her to cruelty. We are referring to these provisions only to show that the Legislature has realised the need to provide for additional provisions in the Indian Penal Code and the Indian Evidence Act to check the growing menace of dowry deaths...”

6. Presently, to the factual score. The instant Petitions have been preferred under Article 32 of the Constitution of India seeking directions to the respondents to create an enabling environment for married women subjected to cruelty to make informed choices and to create a uniform system of monitoring and systematically reviewing incidents of violence against women under Section 498-A IPC including their prevention, investigation, prosecution and rehabilitation of the victims and their children at the Central, State and District levels. That apart, prayer has been made to issue a writ of mandamus to the respondents for a uniform policy of registration of FIR, arrest and bail in cases of Section 498-A IPC in consonance with the law of the land, i.e., to immediately register FIR on complaint of cruelty and harassment by married women as per the IPC.

7. It has been averred by the petitioners that hundreds of women are being subjected to horrific acts of violence often in the guise of domestic abuse or to extract more money from the girl's natal family due to absence of any uniform system of monitoring and systematic review of incidents of violence against married women which has led to dilution of the legislative intent behind Section 498-A IPC. And, in the wake of ever increasing crimes leading to unnatural deaths of women in marital homes, any dilution of Section 498-A IPC is not warranted.

8. It has been contended that Section 498-A IPC, since its introduction, has increasingly been vilified and associated with the perception that it is misused by women who frequently use it as a weapon against their in-laws. As per the petitioners, though there is general complaint that Section 498-A IPC is subject to gross misuse, yet there is no concrete data to indicate how frequently the provision has been misused. Further, the Court, by whittling down the stringency of Section 498-A IPC, is proceeding on an erroneous premise that there is misuse of the said provision, whereas in fact misuse by itself cannot be a ground to repeal a penal provision or take away its teeth.

9. It is set forth in the petition that Section 498-A IPC has been specifically enacted to protect the vulnerable sections of the society who have been victims of cruelty and harassment. The social purpose behind Section 498-A IPC is being lost as the rigour of the said provision has been diluted and the offence has practically been made bailable by reason of various qualifications and restrictions prescribed by various decisions of this Court including Rajesh Sharma and others v. State of U.P. and another 4, a recent pronouncement.

10. It has also been submitted by the petitioners that the police is hesitant to arrest the accused on complaint of married women and the same inaction is justified by quoting various judgments, despite the fact that Section 498-A IPC discloses a non-bailable offence and sufficient checks and balances have been provided in the law itself under Section 41 CrPC. To prevent arbitrary and necessary arrest, the statute very clearly states that the police shall record reasons for effecting arrest as well as for not arresting.

11. The petitioners have also asseverated that there is lack of monitoring mechanism to track cases registered under Section 498-A IPC including systematic study of the reason of low convictions and due to this absence, penal laws have not been able to secure a safe married environment to women. This, as per the petitioners, has also resulted in rise in cases under Section 498-A IPC because the deterrent effect of the said provision is getting diluted. It is also the case of the petitioners that

investigation by the police of offence under Section 498-A IPC is often unprofessional and callous and the investigating officers AIR 2017 SC 3869 : 2017 (8) SCALE 313 perceptibly get influenced by both the parties which results in perpetrators escaping conviction.

12. It is further contended that in many cases under Section 498-A, IPC the Court has not considered mental cruelty caused to the woman but has concentrated only on any sign of physical cruelty due to which the courts do not look into a case if the evidence does not show that the woman was physically harassed. This has led the courts to brand the woman on many occasions as hyper-sensitive or of low tolerance level.

13. It has been further averred that the alleged abuse of the penal provision is mostly by well-educated women who know that the offence is both cognizable and non-bailable and impromptu works on the complaint of the woman by placing the man behind the bars, but this cannot be a ground for denying the poor and illiterate women the protection that is offered by Section 498-A IPC against cruelty, rather there is a need to create awareness specifically in the rural areas about the laws for protection of women and consequent available remedies in case of breach.

14. It is also set forth in the petition that despite the Dowry Prohibition Act, 1961 being passed, the irony still survives perhaps with more oxygen, for the social evil of dowry is on the increase and is openly practised with pride. It is put forth that women today are still tortured and often the court, despite being the ultimate saviour, does not come to the rescue of these women as a consequence of which an atmosphere of ambivalence prevails and such societal ambivalence creates a situation of war between two classes though in actuality the offence is relatable to individuals. A sorry state of affairs is pronouncedly asserted.

15. On the aforesaid bedrock, a prayer in Writ Petition (Civil) No. 73 of 2015 has been made to have a uniform policy of registration of FIR, arrest and bail in cases of Section 498-A IPC. It is worthy to note here that during the pendency of this Writ Petition, the judgment had been pronounced in Rajesh Sharma (supra). The Court in Rajesh Sharma (supra) issued the following guidelines:-

> "19.i) (a) 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.
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> (b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/ wives of working officers/other citizens who may be found suitable and willing.
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> (c) The Committee members will not be called as witnesses.
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> (d) Every complaint under Section 498A 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.

(e) 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.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) 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.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints under Section 498A 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;

iii) 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;

iv) 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;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) 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; and

vii) 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 video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death."

16. In the meanwhile, Writ Petition (Criminal) No. 156 of 2017 had been filed. A prayer had been made in the said Writ Petition to implement the suggestion that out of three members, at least two members should be appointed in the Family Welfare Committee. When this Writ Petition was listed on 13.10.2017, the following order came to be passed:-

> "Mr. Alok Singh, learned counsel for the petitioner though has a different set of prayers in the writ petition, it fundamentally requires this Court to implement directions rendered in Criminal Appeal No.1265 of 2017 [Rajesh Sharma vs. State of U.P. and Another]. Additionally, learned counsel would submit that certain lady members, certain organizations and welfare committees are to be involved.
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> At this stage, we are obligated to state that we are not in agreement with the decision rendered in Rajesh Sharma (supra) because we are disposed to think that it really curtails the rights of the women who are harassed under Section 498A of the Indian Penal Code. That apart, prima facie, we perceive that the guidelines may be in the legislative sphere.
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> Issue notice to the respondent Nos.1 to 3. No notice need be issued to the respondent No.4. Even if the petitioner does not take steps, the Registry shall see to it that the respondents are served. Ms. Indu Malhotra and Mr. V. Shekhar, learned senior counsel are appointed as Amicus Curiae to assist the Court in the matter.
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> List the matter on 29th November, 2017."

17. Mr. V. Shekhar, learned senior counsel, was appointed as Amicus Curiae to assist the Court in the matter.

18. It was submitted by the learned Amicus Curiae that the decision in Rajesh Sharma (supra) requires reconsideration, for the said judgment confers powers on the Family Welfare Committee to be constituted by the District Legal Services Authority which is an extra-judicial committee of para legal volunteers/social workers/retired persons/wives of working officers/other citizens to look into the criminal complaints under Sections 498-A IPC in the first instance and further, there has been a direction that till such time a report of the committee is received, no arrest should be made. It is urged that the constitution of FWC to look into the criminal complaints under Section 498-A IPC is contrary to the procedure prescribed under the Code of Criminal Procedure.

19. It is further propounded that the directions in certain paragraphs of the judgment in Rajesh Sharma (supra) entrusting the power to dispose of the proceedings under Section 498-A IPC by the District and Sessions Judge or any other senior judicial officer nominated by him in the district in cases where there is settlement, are impermissible, for an offence under Section 498-A is not compoundable and hence, such a power could not have been conferred on any District and Sessions Judge or any senior judicial officer nominated by him. Elaborating the said submission, it is canvassed that the High Court is empowered under Section 482 CrPC to quash the proceeding if there is a settlement between the parties. Learned Amicus Curiae further submitted that the recovery of disputed dowry items may not itself be a ground for denial of bail which is the discretion of the court to decide the application of grant of bail in the facts and circumstances of the case and thus, this tantamounts to a direction which is not warranted in law. Criticism has been advanced with regard to the direction in paragraph 19(v) which states that for persons who are ordinarily residing out of India, impounding of passports or issuance of Red Corner Notice should not be done in a routine manner. It is urged that if an accused does not join the investigation relating to matrimonial/family offence, the competent court can issue appropriate directions to the concerned authorities to issue Red Corner Notice which will depend on the facts of the case.

20. Learned Amicus Curiae has further put forth that dispensation of personal appearance of outstation family members is unwarranted, for in a criminal proceeding, the competent court which deals with application of exemption should be allowed to exercise the judicial discretion and there should not have been a general direction by this Court. Certain suggestions have been given by the learned Amicus Curiae which we shall refer to at the relevant stage.

21. To appreciate the controversy, it is necessary to understand the scope of Section 498-A of IPC. It reads thus:-

> "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—
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> (a) any wilful 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."

22. The said offence is a cognizable and non-bailable offence. This Court in Arnesh Kumar v. State of Bihar and another5 has observed that the said offence which is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. The Court has taken note of the statistics under "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs which shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A. Showing concern, the Court held that arrest brings humiliation, curtails freedom and casts scars forever and the police had not learnt its lesson which is implicit and embodied in the Criminal Procedure Code. Commenting on the police, the Court said:-

> "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 (2014) 8 SCC 273 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."

23. The Court, thereafter, has drawn a distinction between the power to arrest and justification for the exercise of it and analysed Section 41 CrPC. Section 41 stipulates when police may arrest without warrant. The said provision reads as follows:-

> "41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
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> (a) who commits, in the presence of a police officer, a cognizable offence;
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> (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:--
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> (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate."

24. Scrutinising the said provision, the Court held as under:-

> "7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.
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> x x x x x 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

25. The learned Judges, thereafter, referred to Section 41-A CrPC which has been inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009). The said provision is to the following effect:-

"41-A. Notice of appearance before police officer.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice." Explaining the said provision, it has been ruled:-

"9. ...The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid." The Court further went on to say that:-

"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." The directions issued in the said case are worthy to note:-

"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."

26. The aforesaid decision, as is perceptible, is in accord with the legislative provision. The directions issued by the Court are in the nature of statutory reminder of a constitutional court to the authorities for proper implementation and not to behave like emperors considering the notion that they can do what they please. In this context, we may refer with profit to a passage from Joginder Kumar v. State of U.P and others6:-

"20. ... No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be

avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

27. Again, the Court in Joginder Kumar (supra), while voicing its concern regarding complaints of human rights pre and after arrest, observed thus:-

"9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of (1994) 4 SCC 260 deciding which comes first—the criminal or society, the law violator or the law abider...."

28. In D.K. Basu v. State of W.B.7, after referring to the authorities in Joginder Kumar (supra), Nilabati Behera v. State of Orissa and others8 and State of M.P. v. Shyamsunder Trivedi and others9, the Court laid down certain guidelines and we think it appropriate to reproduce the same:-

"(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 (1997) 1 SCC 416 (1993) 2 SCC 746 (1995) 4 SCC 262 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 notice board."

29. In Lalita Kumari v. Government of Uttar Pradesh and others10, the Constitution Bench, referring to various provisions of CrPC, adverted (2014) 2 SCC 1 to the issue of conducting a preliminary enquiry. Eventually, the Court opined that the scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence and, thereafter, proceeded to state thus:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

30. From the aforesaid, it is quite vivid that the Constitution Bench had suggested that preliminary enquiry may be held in matrimonial/family disputes.

31. In Rajesh Sharma (supra), as is noticeable, the Court had referred to authorities in Arnesh Kumar (supra) and Lalita Kumari (supra) and observed that:-

> "16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable. 11 Just and fair procedure being part of fundamental right to life,12 interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The court has incidental power to quash even a non-compoundable case of private nature, if continuing the proceedings is found to be oppressive. 13 While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised.
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> 17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.
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> 18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose."

32. After so stating, the directions have been issued which we have reproduced in paragraph 15 hereinabove.

33. On a perusal of the aforesaid paragraphs, we find that the Court has taken recourse to fair procedure and workability of a provision so Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India : (2012) 10 SCC 603, Para 52; SCBA v. Union of India : (1998) 4 SCC 409, Para 47; Union of India v. Raghubir Singh (d) by Lrs. : (1989) 2 SCC 754, Para 7; Dayaram v. Sudhir Batham : (2012) 1 SCC 333 State of Punjab v. Dalbir Singh : (2012) 3 SCC 346, Paras 46, 52 & 85 Gian Singh v. State of Punjab : (2012) 10 SCC 303, Para 61 that there will be no unfairness and unreasonableness in implementation and for the said purpose, it has taken recourse to the path of interpretation. The core issue is whether the Court in Rajesh Sharma (supra) could, by the method of interpretation, have issued such directions. On a perusal of the directions, we find

that the Court has directed constitution of the Family Welfare Committees by the District Legal Services Authorities and prescribed the duties of the Committees. The prescription of duties of the Committees and further action therefor, as we find, are beyond the Code and the same does not really flow from any provision of the Code. There can be no denial that there has to be just, fair and reasonable working of a provision. The legislature in its wisdom has made the offence under Section 498-A IPC cognizable and non-bailable. The fault lies with the investigating agency which sometimes jumps into action without application of mind. The directions issued in Arnesh Kumar (supra) are in consonance with the provisions contained in Section 41 CrPC and Section 41-A CrPC. Similarly, the guidelines stated in Joginder Kumar (supra) and D.K. Basu (supra) are within the framework of the Code and the power of superintendence of the authorities in the hierarchical system of the investigating agency. The purpose has been to see that the investigating agency does not abuse the power and arrest people at its whim and fancy.

34. In Rajesh Sharma (supra), there is introduction of a third agency which has nothing to do with the Code and that apart, the Committees have been empowered to suggest a report failing which no arrest can be made. The directions to settle a case after it is registered is not a correct expression of law. A criminal proceeding which is not compundable can be quashed by the High Court under Section 482 CrPC. When settlement takes place, then both the parties can file a petition under Section 482 CrPC and the High Court, considering the bonafide of the petition, may quash the same. The power rests with the High Court. In this regard, we may reproduce a passage from a three-Judge Bench in Gian Singh (supra). In the said case, it has been held that:-

> "61. ... Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim s family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility

> of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

35. Though Rajesh Sharma (supra) takes note of Gian Singh (supra), yet it seems to have it applied in a different manner. The seminal issue is whether these directions could have been issued by the process of interpretation. This Court, in furtherance of a fundamental right, has issued directions in the absence of law in certain cases, namely, Lakshmi Kant Pandey v. Union of India14, Vishaka and others v. State of Rajasthan and others15 and Common Cause (A Registered Society) v. Union of India and another16 and some others. In the obtaining factual matrix, there are statutory provisions and judgments in the field and, therefore, the directions pertaining to constitution of a Committee and conferment of power on the said Committee is (1984) 2 SCC 244 (1997) 6 SCC 241 (2018) 5 SCC 1 erroneous. However, the directions pertaining to Red Corner Notice, clubbing of cases and postulating that recovery of disputed dowry items may not by itself be a ground for denial of bail would stand on a different footing. They are protective in nature and do not sound a discordant note with the Code. When an application for bail is entertained, proper conditions have to be imposed but recovery of disputed dowry items may not by itself be a ground while rejecting an application for grant of bail under Section 498-A IPC. That cannot be considered at that stage. Therefore, we do not find anything erroneous in direction Nos. 19(iv) and

(v). So far as direction No. 19(vi) and 19(vii) are concerned, an application has to be filed either under Section 205 CrPC or Section 317 CrPC depending upon the stage at which the exemption is sought.

36. We have earlier stated that some of the directions issued in Rajesh Sharma (supra) have the potential to enter into the legislative field. A three-Judge Bench in Suresh Seth v. Commissioner, Indore Municipal Corporation and others17 ruled thus:-

> "5. ... In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Assn. v.
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> (2005) 13 SCC 287 Union of India18 (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. ..."

37. Another three-Judge Bench in Census Commissioner and others v. R. Krishnamurthy 19 , after referring to N.D. Jayal and another v. Union of India and others20, Rustom Cavasjee Cooper v. Union of India21, Premium Granites and another v. State of T.N. and others 22 , M.P. Oil Extraction and another v. State of M.P. and others23, State of Madhya Pradesh v. Narmada Bachao Andolan and another24 and State of Punjab and others v. Ram Lubhaya Bagga and others25, opined:-

> "33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion." (1989) 4 SCC 187 (2015) 2 SCC 796 (2004) 9 SCC 362 (1970) 1 SCC 248 (1994) 2 SCC 691 (1997) 7 SCC 592 (2011) 7 SCC 639 (1998) 4 SCC 117

38. In the aforesaid analysis, while declaring the directions pertaining to Family Welfare Committee and its constitution by the District Legal Services Authority and the power conferred on the Committee is impermissible. Therefore, we think it appropriate to direct that the investigating officers be careful and be guided by the principles stated in Joginder Kumar (supra), D.K. Basu (supra), Lalita Kumari (supra) and Arnesh Kumar (supra). It will also be appropriate to direct the Director General of Police of each State to ensure that investigating officers who are in charge of investigation of cases of offences under Section 498-A IPC should be imparted rigorous training with regard to the principles stated by this Court relating to arrest.

39. In view of the aforesaid premises, the direction contained in paragraph 19(i) as a whole is not in accord with the statutory framework and the direction issued in paragraph 19(ii) shall be read in conjunction with the direction given hereinabove.

40. Direction No. 19(iii) is modified to the extent that if a settlement is arrived at, the parties can approach the High Court under Section 482 of the Code of Criminal Procedure and the High Court, keeping in view the law laid down in Gian Singh (supra), shall dispose of the same.

41. As far as direction Nos. 19(iv), 19(v) and 19(vi) and 19(vii) are concerned, they shall be governed by what we have stated in paragraph

35.

42. With the aforesaid modifications in the directions issued in Rajesh Sharma (supra), the writ petitions and criminal appeal stand disposed of. There shall be no order as to costs.

….……..,CJI (Dipak Misra) ….……..,J (A.M. Khanwilkar) .....,J (Dr. D.Y. Chandrachud) New Delhi;

September 14 , 2018.