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RASHMI CHOPRA

v.

THE STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No.594 of 2019).

April 30, 2019

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[ASHOK BHUSHAN AND K.M. JOSEPH, JJ.]

Code of Criminal Procedure, 1973:

s.482 – Application under – By six appellants-accused – Praying for quashing the complaint and criminal proceedings in a complaint case u/ss. 498A, 323, 504, 506 IPC and s.3/4 of Dowry Prohibition Act – Application dismissed by High Court – Appeal to Supreme Court – Held: There were two sets of allegations in the complaint – One was with regard to offences u/ss. 323, 504 and 506 IPC and another for offences u/s. 498A IPC and ss. 3/4 of Dowry Prohibition Act – Complaint u/ss. 323, 504 and 506 was made only against one appellant-accused and two unknown persons – Therefore, other appellants could not have been summoned for the offences u/ss. 323, 504 and 506 IPC – In the complaint u/s. 498A IPC r/w ss. 3/4 of Dowry Prohibition Act there were common general allegations against every appellant and the complaint shows that the same was filed with a view to harass the appellants and hence deserves to be quashed – Penal Code, 1860 – ss. 323, 504, 506 and 498A – Dowry Prohibition Act, 1984 – ss.3/4.

Penal Code, 1860:

s.498A – Complaint alleging offence u/s. 498A – Locus standi of complainant – Held: There is nothing in s.498A to indicate that the complaint has to be necessarily filed by the woman who was subjected to cruelty by husband or his relatives.

Disposing of the appeals, the Court

HELD: 1.1 While taking cognizance of an offence, a Magistrate is not required to pass a detailed order. However, in a case when Magistrate issues process against a person, who is not even charged with the offence for which he is summoned, in such cases the summoning order can be assailed. [Para 12] [1143-A-B]

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Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal & Ors. (2003) 4 SCC 139 : [2003] 2 SCR 621; *Nupur Talwar v. Central Bureau of Investigation & Anr.* (2012) 11 SCC 465 : [2012] 6 SCR 723 – referred to. A

1.2 In the present case, there are two sets of allegations. One set of allegations of offence under Section 498A IPC and Section 3/4 of Dowry Prohibition Act and second set of allegations are allegations made for offences under Sections 323, 504 and 506 of IPC. The allegations under Sections 323, 504 and 506 has been made citing the incident dated 08.11.2014. [Paras 13 and 14][1143-C-D] B C

1.3 The complaint with regard to offences under Sections 323, 504 and 506 IPC has been made only against the accused/appellant in Crl. Appeal No. 595 of 2019 and two unknown persons. Neither in the complaint nor statements made by complainant or his witnesses, there is any allegation with regard to above offences against any other appellants. There being no allegations for offences under Sections 323, 504 and 506 IPC in the complaint or statement before the Magistrate, there was no question of summoning the other appellants for offences under Sections 323, 504 and 506 of IPC. When the complaint does not allege any offence against other appellants, the cognizance of the complaint cannot be taken against other appellants with regard to offences under Sections 323, 504 and 506 IPC. [Para 15][1144-C-D] D E

1.4 In so far as allegations against the appellant in Crl. Appeal No. 595 of 2019, pertaining to Sections 323, 504 and 506 IPC is concerned, there were specific allegations, which were also supported by the complainant and his two witnesses in the evidence, at this stage, this Court cannot pronounce as to whether any incident as alleged by the complainant happened on 08.11.2014 or alleged as offence by respondent No.2 or offence as alleged was committed by the appellant or not. Therefore, said complaint shall be proceeded with and the order dated 17.01.2017 is upheld to the limited extent i.e., summoning of the appellant in Crl. Appeal No. 595 of 2019 under Sections 323, 504 and 506 IPC. [Para 31][1156--F-H; 1157-A] F G H

- A **2.1 Criminal prosecution can be allowed to proceed only when a *prima facie* offence is disclosed. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. If High Court finds that proceedings deserve to be quashed in parameters as laid down by this Court in **Bhajan Lal* case, High court shall not hesitate in exercise of jurisdiction under Section 482 Cr.P.C. to quash the proceedings. [Para 21][1149-H; 1150-A-B]**
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- C *Rakhi Mishra v. State of Bihar and Others* (2017) 16 SCC 772 ; *Sonu Gupta v. Deepak Gupta* (2015) 3 SCC 424 : [2015] 1 SCR 1069 ; *K. Subba Rao and Others v. State of Telangana* (2018) 14 SCC 452 ; *Vineet Kumar and Others v. State of Uttar Pradesh and Another* (2017) 13 SCC 369: [2017] 6 SCR 922; **State of Haryana v. Bhajan Lal* (1992) 1 Suppl. SCC 335 : [1990] 3 Suppl. SCR 259 – relied on.

- D **2.2 So far as the allegations made in the complaint under Section 498A IPC and Section 3/4 of Dowry Prohibition Act are concerned, the complaint was filed by respondent No.2 on 10.05.2015, before which date, the petition for divorce had already been filed in the Court. It is on the record that at the time of filing of the complaint ‘V’ (wife) was living in Canada whereas appellant in Criminal Appeal No. 599 of 2019 (husband) was living in U.S.A. Both were separately living. It was pleaded in the application for divorce that husband and wife had separated on or around November, 2013. It is on the record that neither on the day criminal complaint was filed in the Court of C.J.M. ‘V’ (wife)**
- E **was in India nor was she in India at the time when statements were recorded in complaint of complainant as well as his two witnesses. The complaint is not by ‘V’ (wife) but it was filed by her father. In the divorce application filed in the State of Michigan, ‘V’ (wife) was represented by her attorney. The divorce was**
- F **granted with orders relating to alimony, pension benefits and retirement benefits, life insurance, property settlement and provision in lieu of dower, mutual release of claims and other aspects on 24.02.2016. [Para 22][1150-B-F]**
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2.3 There is nothing on the record to indicate that orders of divorce between the parties was brought into the notice of the Magistrate when he issued process against the appellants. Decree of divorce shall not wipe out any criminal offence, which has been committed within the meaning of I.P.C. or Dowry Prohibition Act and the criminal offence committed in jurisdictional court has to be examined despite the divorce decree having been granted. [Para 23][1150-F-G]

2.4 A perusal of the complaint indicates that the allegations against the appellants for offence under Section 498A IPC and Section 3/4 of Dowry Prohibition Act are general and sweeping. No specific incident dates or details of any incident has been mentioned in the complaint. The complaint having been filed after proceeding for divorce was initiated in the State of Michigan, where ‘V’ (wife) participated and divorce was ultimately granted. A few months after filing of the divorce petition, the complaint has been filed in the Court of C.J.M. The sequence of the events and facts and circumstances of the case leads the Court to conclude that the complaint under Section 498A IPC and Section 3/4 of Dowry Prohibition Act have been filed as counter blast to divorce petition proceeding in the State of Michigan. [Para 24][1150-H; 1151-AC]

2.5 There being no specific allegation regarding any one of the applicants except common general allegation against everyone i.e. “they started harassing the daughter of the applicant demanding additional dowry of one crore” and the fact that all relatives of the husband, namely, father, mother, brother, mother’s sister and husband of mother’s sister have been roped in clearly indicate that application under Section 156(3) Cr.P.C. was filed with a view to harass the applicants. Further, prior to filing of the application under Section 156(3) Cr.P.C. there was no complaint at any point of time by the girl or her father making allegation of demand of any dowry by any one of the applicants. [Para 25] [1151-C-E]

2.6 The judgment in divorce proceedings indicates that the parties to the divorce petition had settled all issues between them including division of properties at the time when divorce

A proceedings were in progress at Michigan and both the parties were not in India, the complaint under Section 156(3) Cr.P.C. had been filed making allegation under Section 498A of IPC and ss. 3/4 of the Dowry Prohibition Act only to harass and put pressure on the applicants. [Para 26][1151-B-C]

B 2.7 Therefore, insofar as the offence under Section 498A IPC and Section 3/4 of Dowry Prohibition Act is concerned, present is a case, which is covered by Category 7 as enumerated by **Bhajan Lal* case and the High Court erred in refusing to exercise its jurisdiction under Section 482 Cr.P.C. [Para 31] [1156-E-F]

C 3. High Court in its impugned judgment has not referred to allegations made in the complaint except noticing that the summoning order has been passed and noticing the principles of law. The High Court ought to have first set out the brief facts of the case with a view to understand the factual matrix and then
D examined the challenge made to the proceedings in the light of the principles of law laid down by this Court with a view to record the findings on the grounds urged by the appellants as to whether any interference therein is called for or not. [Para 27][1154-D; 1155-B]

E *Jagdish Prasad and Others v. State of Uttar Pradesh and Another* (2019) 2 SCC 184 – relied on.

F 4. Section 498A IPC provides for an offence when husband or the relative of the husband, subject her to cruelty. There is nothing in Section 498A, which may indicate that when a woman is subjected to cruelty, a complaint has to be filed necessarily by the women so subjected. A perusal of Section 498A indicates that the provision does not contemplate that complaint for offence under Section 498A should be filed only by women, who is subjected to cruelty by husband or his relative. Complaint filed
G by respondent No.2, the father of the victim/girl cannot be said to be not maintainable on this ground. [Para 30][1156-C-E]

Case Law Reference

	[2003] 2 SCR 621	referred to	Para 11
H	[2012] 6 SCR 723	referred to	Para 12

(2017) 16 SCC 772	relied on	Para 16	A
[2015] 1 SCR 1069	relied on	Para 16	
(2018) 14 SCC 452	relied on	Para 18	
[2017] 6 SCR 922	relied on	Para 19	
[1990] 3 Suppl. SCR 259	relied on	Para 21	B
(2019) 2 SCC 184	relied on	Para 27	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
No.594 of 2019 C

From the Judgment and Order dated 08.08.2018 of the High Court
of Judicature at Allahabad in case application under Section 482 No.30257
of 2017

With

Criminal Appeal Nos.598, 599, 597, 596 and 595 of 2019. D

Shikhil Suri, Shiv Kumar Suri, Ms. Shilpa Saini, Ms. Vinishma
Kaul, Santosh Krishnan, Ms. Deepika Kalia, Sarvesh Singh Baghel, Advs.
for the appearing parties.

The Judgment of the Court was delivered by E

ASHOK BHUSHAN, J. 1. These appeals have been filed
challenging the judgment of Allahabad High Court dated 08.08.2018 by
which the application under Section 482 Cr.P.C. filed by the appellants
praying for quashing the complaint and proceedings in Complaint Case
No. 4967 of 2015 have been dismissed. F

2. All the appeals having been filed against the same judgment,
facts of the case are being taken from **Criminal Appeal No. 594 of
2019 – Rashmi Chopra & Ors. Vs. The State of Uttar Pradesh &
Anr.**, in which criminal appeal, reply affidavit and rejoinder affidavit
have been filed. The background facts of the case necessary to be G
noted for deciding these appeals are:-

2.1 Nayan Chopra, son of Rashmi Chopra and Rajesh Chopra
got married with Vanshika Bobal, daughter of respondent
No.2, Indrajeet Singh on 15.04.2012. All the appellants are
family members of Nayan Chopra. Rashmi Chopra is H

- A mother, Rajesh Chopra is father, Amit Chopra is Brother and Anita Gandhi is Mother's Sister of Nayan Chopra, whereas Kuldeep Gandhi is husband of Anita Gandhi. Nayan Chopra with his mother, father and brother are resident of 203, Jainti Apartment, Police Station – Begumpet, Hyderabad (Andhra Pradesh). Anita Gandhi and Kuldeep Gandhi are resident of Greater Kailash – I, New Delhi.
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- 2.2 After the marriage of Nayan Chopra and Vanshika, which was performed at Noida, District Gautam Buddha Nagar on 15.04.2012, Vanshika went alongwith her husband at Hyderabad, the matrimonial home of Vanshika. On
- C 28.04.2012, Vanshika and Nayan Chopra left for the U.S.A. On or about November, 2013, Vanshika and Nayan Chopra separated. On 23.10.2014, an application was filed by Nayan Chopra in the Circuit Court for the County of Kalamazoo Family Division, Michigan,USA, seeking
- D divorce.
- 2.3 On 10.11.2014, a complaint was sent by respondent No.2 through registered post to the Superintendent of Police, Gautam Buddha Nagar, Noida making allegations against Rajesh Chopra and two other unknown persons. An
- E application under Section 156(3) was filed by respondent No.2. The application of the respondent No.2 was sent by the Magistrate to Mediation Centre running under the District Legal Services Authority for counselling. After failure of counselling and mediation, an application under
- F Section 156(3) Cr.P.C. was filed by respondent No.2 dated 10.05.2015 making allegations against all the appellants under Section 498A and Sections 3/4 of Dowry Prohibition Act.
- 2.4 In the complaint, allegations have been made on the basis of incident dated 08.11.2014 against Rajesh Chopra and his
- G associates. It was alleged that Rajesh Chopra called the respondent No.2 near the Gurudwara at Sector 18, Noida to talk about the problem of Nayan Chopra and Vanshika and when respondent No.2 went for talks, he met Rajesh Chopra with two unknown persons. Respondent No.2
- H further alleges that on his request to accept his daughter,

Rajesh Chopra repeated his demand of one crore rupees and used filthy words against Vanshika, which was objected by respondent No.2, on which Rajesh Chopra and his associates became annoyed and they abused and beat the respondent No.2 and snatched his gold chain from his neck and Rs.60,000/- from his pocket. The allegations within the meaning of Sections 323, 324, 504, 506, 392 of I.P.C. were made on the basis of the aforesaid incident. In the application, it was also stated that Nayan Chopra has filed a petition for dissolution of marriage in America.

- 2.5 On the basis of the application of divorce by Nayan Chopra, the Circuit 9th Court for the County of Kalamazoo Family Division, Michigan gave a judgment of divorce on 24.02.2016. The order of judgment of divorce was passed after hearing both Nayan Chopra and Vanshika Bobal, who were represented through attorneys. The judgment of divorce made provisions for alimony, pension benefits and retirement benefits, life insurance, property settlement and provision in lieu of dower, mutual release of claims and other provisions.
- 2.6 The application under Section 156(3) Cr.P.C. filed by respondent No.2 was treated as a complaint and registered as Complaint No. 4967 of 2015, on which the learned Judicial Magistrate, Gautam Budh Nagar issued a summoning order on 17.01.2017 summoning the appellants under Sections 498A, 323, 504, 506 of I.P.C. and Section 3/4 of Dowry Prohibition Act.
- 2.7 The appellants filed an application under Section 482 Cr.P.C. in the High Court praying for quashing the complaint and proceedings and order dated 17.01.2017 in Complaint Case No. 4967 of 2015. In the application under Section 482 Cr.P.C., High Court passed an order referring the matter to mediation centre of Allahabad High Court. The mediation having failed between the parties, application under Section 482 Cr.P.C. was heard. The prayer of the appellants to quash the complaint and proceedings have been refused. The application was disposed of after directing that the applicants may surrender in the court below and make an

A application for bail within a period of two months. Aggrieved against the judgment of the High Court, these appeals have been filed.

3. All appeals arise out of the same order passed in their application under Section 482 Cr.P.C.

B 4. We have heard Shri Shikhil Suri, learned counsel for the appellants and Shri Santosh Krishnan, learned AOR appearing for the respondent No.2. We have also heard learned counsel for the State of Uttar Pradesh.

C 5. Learned counsel for the appellants submits that High Court failed to exercise jurisdiction under Section 482 Cr.P.C. in quashing the entire complaint proceedings, which proceedings are nothing but abuse of the process of the court. It is submitted that Nayan Chopra and Vanshika Bobal had already been granted divorce by Family Court of Michigan, which fact was not brought into notice of the Magistrate by respondent No.2 before summoning order was passed. It is submitted that a reading of the complaint does not prima facie disclose any offence under Section 498A and 3/4 of Dowry Prohibition Act against the appellants. The appellants, Anita Gandhi and Kuldeep Gandhi separately reside and they have never met Vanshika, the girl after marriage. The allegations in the complaint are vague, sweeping and general. The complaint is not even filed by Vanshika, the girl nor she got her statement recorded in support of the complaint. In so far as incident alleged on 08.11.2014 at Sector 18, Noida such incident took place and allegations are false and concocted to somehow rope in Rajesh Chopra, the father of the boy Nayan Chopra. The complaint has not been filed by competent person, hence ought not to have been entertained.

F 6. Shri Santosh Krishnan, learned counsel appearing for respondent No.2 submits that there is no error in summoning of the appellants by the Magistrate by order dated 17.01.2017. It is well settled that Magistrate is not required to record elaborate reasons for summoning of an accused. The complaint discloses several allegations pertaining to offence under Section 498A and other offences mentioned therein. Two courts having taken one particular view of the matter, this Court may not exercise its jurisdiction in interfering with the orders. It is further submitted that Section 498A does not indicate that complaint on behalf of the women

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has to be filed by the women herself. The complaint was fully competent and no error has been committed by Magistrate in taking cognizance of the complaint. A

7. Learned counsel for the parties have placed reliance on various judgments of this Court in support of their submissions, which shall be referred to while considering the submissions in detail. B

8. We have considered the submissions of the learned counsel for the parties and have perused the records.

9. The copy of the complaint under Section 156(3) Cr.P.C., which has been treated as private complaint by Magistrate has been brought on the record as Annexure P-2. The allegations in the complaint are that marriage was solemnised on 15.04.2012 in which marriage, gifts of Rs.50 lakhs were given to Nayan Chopra and his family members. It is alleged that after the marriage, all family members were not satisfied by the gifts and they started harassing the daughter of respondent No.2 by demanding further dowry of one crore rupees. They further pressurised to solemnise the marriage of Vanshika as per Punjabi rites and ceremonies, on which pressure, marriage was solemnised on 06.11.2012 in Gurudwara at Sector 37, Noida as per Punjabi rites and ceremonies. Further allegations are that family members of Nayan Chopra kept on threatening Vanshika to desert her and on 01.12.2013 Nayan Chopra threw Vanshika out of house and since then Vanshika is residing with respondent No.2. Another set of allegations are with regard to incident dated 08.11.2014 alleged to have been taken place at 6.00 PM near the Gurudwara, Sector-18, Noida. It is alleged that Rajesh Chopra, father of Nayan Chopra called the respondent No.2 to talk about their problem on which date Rajesh Chopra again repeated his demand of one crore rupees and used filthy words against Vanshika to which respondent No.2 objected, on which Rajesh Chopra and his associates became annoyed and they abused and beat the respondent No.2 and snatched his gold chain from his neck and Rs.60,000/- from his pocket. The above two sets of allegations have given rise to summoning order. The summoning order passed by the Magistrate on 17.01.2017 is as follows:- C
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“ORDER

The accused persons Nayan Chopra, Rajesh Chopra, Rashi Chopra, Amit Chopra, Kuldeep Gandhi & Anita Gandhi are

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A summoned for the offence under Sections 498A, 323, 504, 506 of IPC and Section 3/4 of D.P. Act. The complainant is directed to take steps as per Rules within one week. Case is fixed for 08.03.2017 for appearance.

Sd/- illegible

17.01.2017

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(Vikas)

Civil Judge (Jr. Division)

J.M. Gautam Budh Nagar.”

C 10. One of the submissions, which has been pressed by learned counsel for the respondent No.2 is that Magistrate has to be satisfied that there are grounds for proceeding and there is no requirement of giving any elaborate reasons for summoning the accused.

D 11. Learned counsel for the respondent has placed reliance on **Dy. Chief Controller of Imports & Exports Vs. Roshanlal Agarwal & Ors., (2003) 4 SCC 139**, this Court in paragraph No. 9 of the judgment laid down following:-

E “9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in *U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745* and after noticing the law laid down in *Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722*, it was held as follows: (SCC p. 749, para 6)

G The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

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12. Same proposition was reiterated by this Court in **Nupur Talwar Vs. Central Bureau of Investigation & Anr., (2012) 11 SCC 465**. There can be no dispute to the above proposition as laid down by this Court that while taking cognizance of an offence, a Magistrate is not required to pass a detailed order, however, in a case when Magistrate issues process against a person, who is not even charged with the offence for which he is summoned, whether in such cases also the summoning order cannot be assailed?

13. In the present case, there are two sets of allegations, which are contained in the complaint, which has also been repeated in the statements recorded by respondent No.2 and his two witnesses – PW1 – Raj Kumar, brother of respondent No.2 and PW2 – Deepa, wife of respondent No.2. One set of allegations of offence under Section 498A and Section 3/4 of D.P. Act and second set of allegations are allegations made for offences under Sections 323, 504 and 506 of I.P.C.

14. We may first take up the allegations for offences under Sections 323, 504 and 506 of I.P.C. The allegations under Sections 323, 504 and 506 has been made citing the incident dated 08.11.2014. It is useful to extract the entire allegations pertaining to incident dated 08.11.2014 from the complaint, which are to the following effect:-

“.....On 08.11.2014 at about 6 p.m. Nayan Chopra’s father Rajesh Chopra called the Applicant near the Gurudwara at Sector 18, Noida to talk about their problem. When the Applicant reached there for talk then he met there Rajesh Chopra alongwith two unknown persons. When the Applicant requested Rajesh Chopra to accept his daughter the Rajesh Chopra again repeated his demand of one core Rupees and said that if he has arranged for one crore Rupees then he can send his daughter at their home, otherwise keep Vanshika at his house and Rajesh Chopra used filthy words against Vanshika, then the Applicant objected for the same, on which Rajesh Chopra and his associates became annoyed and they abused and beat the Applicant and snatched his gold chain from his neck and Rs.60,000/- from his pocket. The wife of the Applicant and a number of other people gathered at the spot and saved the Applicant from them. While leaving these persons threatened the Applicant that after arranging

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A for one crore Rupees he can send his daughter at their house,
 otherwise keep her at his house and if he dare to inform the police
 then they will kill the Applicant and his daughter Vanshika.....”

15. In the statement made by the complainant in support of his
submission, complainant repeated the same allegations regarding incident
dated 08.11.2014 as made in the complaint, as noted above. PW-2,
B Deepa, wife of respondent No.2 has also about the incident dated
08.11.2014 repeated the allegations as narrated in the complaint. A perusal
of the allegations in the complaint makes it clear that the complaint with
regard to offences under Sections 323, 504 and 506 has been made only
C against Rajesh Chopra and two unknown persons. Neither in the
complaint nor statements made by complainant or his witnesses, there is
any allegation with regard to above offences against any other appellants
before us. There being no allegations for offences under Sections 323,
504 and 506 in the complaint or statement before the Magistrate, there
was no question of summoning the other appellants for offences under
D Sections 323, 504 and 506 of I.P.C. When the complaint does not allege
any offence against other appellants, we fail to see that how the
cognizance of the complaint can be taken against other appellants with
regard to offences under Sections 323, 504 and 506. In above view of
the matter, the complaint as well as summoning order are liable to be
quashed against all the appellants except Rajesh Chopra due to the above
E reasons in above regard.

16. Now, we come to the allegations in the complaint under Section
498A and Section 3/4 of D.P. Act. Learned counsel for the respondent
in support of his submission that power of the High Court under Section
482 Cr.P.C. has to be exercised in exceptional circumstances, has relied
F on judgment of this Court in **Rakhi Mishra Vs. State of Bihar and
Others, (2017) 16 SCC 772**. This Court in the above case has relied
on an earlier judgment of this Court in **Sonu Gupta Vs. Deepak Gupta,
(2015) 3 SCC 424**, in which judgment, in paragraph No.8 following
proposition was laid down, which has been referred to and relied on:-

G “8. ... At the stage of cognizance and summoning the Magistrate
 is required to apply his judicial mind only with a view to take
 cognizance of the offence ... to find out whether a prima facie
 case has been made out for summoning the accused persons. At
 this stage, the learned Magistrate is not required to consider the
 defence version or materials or arguments nor is he required to
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evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.” A

17. This Court in **Rakhi Mishra**’s case has also laid down that High Court in exceptional circumstances can exercise power under Section 482 Cr.P.C. when a prima facie case is not made out against the accused. Paragraph No.5 of the judgment is as follows:- B

“5. The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.” C

18. Learned counsel for the appellant has also relied on various judgments of this Court in support of his submissions. In **K. Subba Rao and Others Vs. State of Telangana, (2018) 14 SCC 452**, this Court laid down following in paragraph Nos. 5 and 6:- D

“5. A perusal of the charge-sheet and the supplementary charge-sheet discloses the fact that the appellants are not the immediate family members of the third respondent/husband. They are the maternal uncles of the third respondent. Except the bald statement that they supported the third respondent who was harassing the second respondent for dowry and that they conspired with the third respondent for taking away his child to the U.S.A., nothing else indicating their involvement in the crime was mentioned. The appellants approached the High Court when the investigation was pending. The charge-sheet and the supplementary charge-sheet were filed after disposal of the case by the High Court. E

6. Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See *State of Haryana v. Bhajan Lal, 1992 Suppl. (1) SCC 335*. The courts should be careful in proceeding against the distant relatives in crimes pertaining to F

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A matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. See *Kans Raj v. State of Punjab*, (2000) 5 SCC 207 and *Kailash Chandra Agrawal v. State of U.P.*, (2014) 16 SCC 551"

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19. This Court in **Vineet Kumar and Others Vs. State of Uttar Pradesh and Another**, (2017) 13 SCC 369 had occasion to examine the parameters of exercise of power under Section 482 Cr.P.C. in respect of quashing of criminal proceeding. One of us (Justice Ashok Bhushan) speaking for the Bench after examining the scope and ambit of Section 482 Cr.P.C. laid down following in Paragraph Nos. 22 to 25:-

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“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

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23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy*, (1977) 2 SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated: (SCC p. 703)

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“7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a

weapon of harassment or persecution. In a criminal case, the
veiled object behind a lame prosecution, the very nature of the
material on which the structure of the prosecution rests and
the like would justify the High Court in quashing the proceeding
in the interest of justice. The ends of justice are higher than the
ends of mere law though justice has got to be administered
according to laws made by the legislature. The compelling
necessity for making these observations is that without a proper
realisation of the object and purpose of the provision which
seeks to save the inherent powers of the High Court to do
justice, between the State and its subjects, it would be impossible
to appreciate the width and contours of that salient jurisdiction.”

24. The judgment of this Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, has elaborately considered the scope and ambit of Section 482 CrPC. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately considered the scope of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain categories of cases by way of illustration where power under Section 482 CrPC can be exercised to prevent abuse of the process of the Court or secure the ends of justice.

25. Para 102 which enumerates 7 categories of cases where power can be exercised under Section 482 CrPC is extracted as follows: (*Bhajan Lal case*, SCC pp. 378-79)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice,

- A though 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 of myriad kinds of cases wherein such power should be exercised.
- B (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.
- C (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.
- D (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.
- E (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.
- F (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.
- G (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.
- H (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.” A

20. After referring to several other cases, this Court concluded
and made following observations in Paragraph No. 41:-

“41. Inherent power given to the High Court under Section 482
CrPC is with the purpose and object of advancement of justice. B
In case solemn process of Court is sought to be abused by a
person with some oblique motive, the Court has to thwart the
attempt at the very threshold. The Court cannot permit a
prosecution to go on if the case falls in one of the categories as
illustratively enumerated by this Court in *State of Haryana v. C*
Bhajan Lal. Judicial process is a solemn proceeding which cannot
be allowed to be converted into an instrument of operation or
harassment. When there are materials to indicate that a criminal
proceeding is manifestly attended with mala fide and proceeding
is maliciously instituted with an ulterior motive, the High Court D
will not hesitate in exercise of its jurisdiction under Section 482
CrPC to quash the proceeding under Category 7 as enumerated
in *State of Haryana v. Bhajan Lal*, which is to the following
effect: (SCC p. 379, para 102)

“102. (7) Where a criminal proceeding is manifestly attended
with mala fide and/or where the proceeding is maliciously E
instituted with an ulterior motive for wreaking vengeance on
the accused and with a view to spite him due to private and
personal grudge.”

Above Category 7 is clearly attracted in the facts of the present
case. Although, the High Court has noted the judgment of *State F*
of Haryana v. Bhajan Lal, but did not advert to the relevant
facts of the present case, materials on which final report was
submitted by the IO. We, thus, are fully satisfied that the present
is a fit case where the High Court ought to have exercised its
jurisdiction under Section 482 CrPC and quashed the criminal G
proceedings.”

21. The criminal prosecution can be allowed to proceed only when
a prima facie offence is disclosed. This Court has observed that judicial
process is a solemn proceeding which cannot be allowed to be converted

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A into an instrument of oppression or harassment. If High Court finds that proceedings deserve to be quashed in parameters as laid down by this Court in **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335**, High court shall not hesitate in exercise of jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

B 22. Now, we revert back to the allegations made in the complaint under Section 498A and Section 3/4 of D.P. Act. Few facts have to be noticed before we look into the allegations made in the complaint in the above regard. The complaint has been filed by the respondent No.2 before the C.J.M., Gautam Budh Nagar on 10.05.2015, before which date, the petition for divorce has already been filed by Nayan Chopra on
C 23.10.2014 before the Circuit Court for the County of Kalamazoo Family Division, Michigan. It is on the record that at the time of filing of the complaint Vanishka Bobal was living at Canada whereas Nayan Chopra was living at U.S.A. Both were separately living. It was pleaded in the application for divorce that husband and wife had separated on or around
D November, 2013. It is on the record that on the day criminal complaint was filed on 10.05.2015 in the Court of C.J.M. Gautam Budh Nagar by respondent No.2, neither Vanishka was in India nor she was in India at the time when statements were recorded in complaint of complainant as well as his two witnesses. The complaint is not by Vanishka but it has been filed by father of Vanishka, respondent No.2. In the divorce
E application filed in the State of Michigan, Vanishka Bobal was represented by her attorney. The divorce was granted with orders relating to alimony, pension benefits and retirement benefits, life insurance, property settlement and provision in lieu of dower, mutual release of claims and other aspects on 24.02.2016.

F 23. There is nothing on the record to indicate that orders of divorce between the parties was brought into the notice of the Magistrate when he issued process against the appellants. We, however, are in agreement with the submission of Shri Santosh Krishan that decree of divorce between Nayan Chopra and Vanshika shall not wipe out any criminal
G offence, which has been committed within the meaning of I.P.C. or D.P.Act and the criminal offence committed in jurisdictional court has to be examined despite the divorce decree having been granted.

24. Coming back to the allegations in the complaint pertaining to Section 498A and Section 3/4 of D.P. Act. A perusal of the complaint

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indicates that the allegations against the appellants for offence under Section 498A and Section 3/4 of D.P. Act are general and sweeping. No specific incident dates or details of any incident has been mentioned in the complaint. The complaint having been filed after proceeding for divorce was initiated by Nayan Chopra in State of Michigan, where Vanshika participated and divorce was ultimately granted. A few months after filing of the divorce petition, the complaint has been filed in the Court of C.J.M., Gautam Budh Nagar with the allegations as noticed above. The sequence of the events and facts and circumstances of the case leads us to conclude that the complaint under Section 498A and Section 3/4 of D.P. Act have been filed as counter blast to divorce petition proceeding in State of Michigan by Nayan Chopra.

25. There being no specific allegation regarding any one of the applicants except common general allegation against everyone i.e. “they started harassing the daughter of the applicant demanding additional dowry of one crore” and the fact that all relatives of the husband, namely, father, mother, brother, mother’s sister and husband of mother’s sister have been roped in clearly indicate that application under Section 156(3) Cr.P.C. was filed with a view to harass the applicants. Further, prior to filing of the application under Section 156(3) Cr.P.C. there was no complaint at any point of time by the girl or her father making allegation of demand of any dowry by any one of the applicants. When both Nayan Chopra and Vanshika started living separately since November, 2013, had there been any dowry demand or harassment the girl would have given complaint to Police or any other authority. Further, in the divorce proceedings at Michigan, U.S.A., parties have agreed for dividing their properties including gifts given at marriage but no complaint was made in those proceedings regarding harassment by her husband or his family members. The judgment of the divorce contains following clauses regarding “Property Settlement and Provision in Lieu of Dower”:

**“PROPERTY SETTLEMENT AND
PROVISION IN LIEU OF DOWER**

1. Each party affirms that he or she fully and accurately disclosed all the assets owned by him or her in which he or she has any interest. By affixing their signatures on this Judgment, Plaintiff and Defendant affirm that each has disclosed all assets

- A each owns or has any interest in, whether held by him or her individually, by both of them jointly or with any other person or entity, or by another person or entity for the benefit of a party. The property division set forth in this Judgment of Divorce is intended to be a distribution and allocation of all the property of the parties and also is intended to declare the parties' property interests as of entry of this Judgment of Divorce. If either party has failed, either intentionally or unintentionally, to disclose any of his or her assets, the issue of property division may be reopened on the motion of either party to determine and resolve the distribution of any previously undisclosed assets.
- B
- C 2. It appears to the court that the parties have divided between them to their mutual satisfaction all articles of personal property, household furniture and appliances, cash, savings and checking accounts and vehicles except as provided below. The personal property as so divided shall be the sole and absolute property of the party in whose possession or under whose control each of the articles of personal property are now found and each shall defend and hold the other harmless from liability thereon.
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- E a. The parties agree to return all jewelry to the other party that they currently have in their possession, which was acquired as a result of their marriage. Plaintiff testified that he only had one item of jewelry and provided the only jewelry he had in his possession to Defendant-a single gold ring. Plaintiff testified she does not have any jewelry in her possession.
- F b. The parties agree that their respective parents will return to the other party's parents, all jewelry given as gifts to their parents and are in their parent's possession, which was acquired by them as a result of the parties' marriage. The parents agree to exchange at a mutually agreed upon location and at a mutually agreed upon time.
- G 3. Except as otherwise provided herein, each party shall be liable for the debts incurred by him or her after separation (11/1/2013) and shall defend and hold the other harmless from all liability thereon.
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4. Except as provide herein, each party shall be liable for the debts in his or her name and for the debts associated with property awarded to him/her pursuant to the Judgment of Divorce and shall defend and hold the other harmless from all liability therein. A

5. Except as otherwise provided herein, each party shall retain all monies in their respective names, including but not limited to checking accounts, savings accounts, certificates of deposit, stocks, bonds, IRAs or 401Ks. B

6. There are no joint debts of the parties except as provided herein.

7. Plaintiff, NAYAN CHOPRA, shall receive the 2013 Honda CRV free and clear from any claim of the Defendant, VANSHIKA BOBAL, and the Plaintiff assumes and agrees to pay the liability thereon and to defend and hold the Defendant harmless thereon. Defendant shall transfer title of such vehicles to the Plaintiff if transferring is needed. C

8. Plaintiff, NAYAN CHOPRA, shall receive the 2005 Toyota Camry free and clear from any claim of the Defendant, VANSHIKA BOBAL, and the Plaintiff assumes and agrees to pay the liability thereon and to defend and hold the Defendant harmless thereon. D

9. The provisions for each party herein made for the parties shall be in lieu of the dower or spousal right in the lands of the other and each shall hereafter hold their remaining lands free, clear and discharged from any such dower, spousal right and claim and said provision shall be in full satisfaction of all claims either may have in any property which the other owns, or may hereafter own, in which either has or may hereafter have an interest. E F

10. The parties warrant that neither has incurred any debt in the other party's name, or on which the other party may be liable, which is not expressly disposed of in this Judgment.

11. This Judgment of Divorce shall constitute a termination of all rights of a surviving spouse including, but not limited to, homestead allowance, election, exempt property, settlement and family allowance by each party in the property of the other, and a G

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A termination of all benefits which would otherwise pass to one party from the other by testate and intestate, succession or by virtue of any provision of any will executed prior to the entry of this Judgment of Divorce.”

B 26. The above judgment in divorce proceedings indicates that Nayan Chopra and Vanshika have settled all issues between them including division of properties at the time when divorce proceedings were in progress at Michigan and both the parties were not in India, the complaint under Section 156(3) Cr.P.C. had been filed making allegation under Section 498A of IPC and the Dowry Prohibition Act only to harass and put pressure on the applicants.

C 27. One observation also needs to be made with regard to order passed by the High Court. High Court in its impugned judgment has not referred to allegations made in the complaint except noticing the summoning order has been passed and noticing the principles of law. This Court had occasion to consider a similar order passed by the High Court rejecting the application under Section 482 Cr.P.C. in **Jagdish Prasad and Others Vs. State of Uttar Pradesh and Another, (2019) 2 SCC 184**. In the said case also under Section 482 Cr.P.C. proceedings, the challenge was made to summoning order as well as entire proceedings of complaint case where allegations under Sections 498A and 323 IPC as well as Section 3/4 of D.P. Act were made. In paragraph No.3, the facts giving rise to filing the application under Section 482 Cr.P.C. before the High Court has been noted. This Court made following observations in paragraph Nos.6 to 9:-

F “6. Having heard the learned counsel for the parties and on perusal of the record of the case we are inclined to set aside the impugned order and remand the case to the High Court for deciding the appellants’ application, out of which this appeal arises, afresh on merits in accordance with law.

G 7. On perusal of the impugned order, we find that the Single Judge has quoted the principles of law laid down by this Court in several decisions relating to powers of the High Court on the issue of interference in cases filed under Section 482 of the Code from para 2 to the concluding para but has not referred to the facts of the case to appreciate the controversy of the case. We are, therefore, unable to know the factual matrix of the case after

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reading the impugned judgment except the legal principles laid down by this Court in several decisions. A

8. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court with a view to record the findings on the grounds urged by the appellants as to whether any interference therein is called for or not. We find that the aforementioned exercise was not done by the High Court while passing the impugned order. B

9. We, therefore, find ourselves unable to concur with such disposal of the application by the High Court and feel inclined to set aside the impugned order and remand the case to the High Court (Single Judge) with a request to decide the application afresh on merits in accordance with law keeping in view the aforementioned observations. Having formed an opinion to remand the case in the light of our reasoning mentioned above, we do not consider it proper to go into the merits of the case.” C D

28. What was said by this Court in paragraph No. 7 and 8 of the above judgment is squarely applicable in the facts of the present case and the order of the High Court deserves to be set aside on this ground alone. E

29. One of the submissions, which has been made by the learned counsel for the appellant also needs to be considered. Learned counsel for the appellant had submitted that complaint has not been filed by a competent person. It is submitted that complaint is not made by Vanshika, but has been filed only by father of Vanshika, hence it is not maintainable. The above submission has been refuted by Shri Santosh Krishnan. He submits that it is not necessary that a complaint under Section 498A should be filed only by the victim of offence. He submits that complaint filed by father of the victim, respondent No.2 was also fully maintainable. Section 498A provides as follows:- F G

“498A.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. H

- A Explanation.—For the purpose of this section, “cruelty” means—
- (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 (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.”
- C 30. Section 498A provides for an offence when husband or the relative of the husband, subject her to cruelty. There is nothing in Section 498A, which may indicate that when a woman is subjected to cruelty, a complaint has to be filed necessarily by the women so subjected. A perusal of Section 498A, as extracted above, indicates that the provision
- D does not contemplate that complaint for offence under Section 498A should be filed only by women, who is subjected to cruelty by husband or his relative. We, thus, are of the view that complaint filed by respondent No.2, the father of Vanshika cannot be said to be not maintainable on this ground. We, thus, reject the submission of the counsel for the appellant that complaint filed by respondent No.2 was not maintainable.
- E 31. In view of the foregoing discussions, insofar as the offence under Section 498A and Section 3/4 of D.P. Act is concerned, we are of the view that present is a case, which is covered by Category 7 as enumerated by **State of Haryana Vs. Bhajan Lal (supra)** and the High Court erred in refusing to exercise its Jurisdiction under Section
- F 482 Cr.P.C. We, however, observe that in so far as allegations against Rajesh Chopra pertaining to Sections 323, 504 and 506 of IPC is concerned, there were specific allegations, which were also supported by the complainant and his two witnesses in the evidence, at this stage, this Court cannot pronounce as to whether any incident as alleged by
- G the complainant happened on 08.11.2014 or alleged as offence by respondent No.2 or offence as alleged was committed by Rajesh Chopra or not. We, thus, are of the view that insofar as complaint pertaining to offence under Sections 323, 504 and 506 I.P.C. against Rajesh Chopra is concerned, said complaint shall be proceeded with and the order dated
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[ASHOK BHUSHAN, J.]

17.01.2017 is upheld to the above extent only, i.e., summoning of Rajesh Chopra under Sections 323, 504 and 506. A

32. In result,

(i) Criminal Appeal Nos.594, 598, 599, 597 and 596 of 2019 (arising out of SLP (Crl.) Nos. 8103, 8050, 8052, 8042 and 8041 of 2018) are allowed. The complaint as well as summoning order dated 17.01.2017 is set aside insofar as the appellants in the above-mentioned criminal appeals are concerned. B

(ii) Criminal Appeal No.595 of 2019 (arising out of SLP (Crl.) No. 8039 of 2018 – Rajesh Chopra Vs. The State of Uttar Pradesh & Anr.) is partly allowed. The complaint as well as summoning order is set aside insofar as offence under Section 498A and Section 3/4 of D.P. Act is concerned, however, complaint shall proceed insofar as offence under Sections 323, 504 and 506 of I.P.C. and summoning order to that extent only is upheld. C

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Kalpana K. Tripathy

Appeals disposed of.