ALS25

[redacted] *MOOT COURT COMPETITION, 2021*

Before

THE HONOURABLE HIGH COURT OF UTTAM PRADESH

AT SAMPUR

ORIGINAL WRIT JURISDICTION

{*Under Article 226 of the Constitution of Indiana read with Section 482 of the Criminal Procedure Code, 1973 for quashing of F.I.R.s*}

IN THE CASE OF

[WRIT PETITION (CRIMINAL M.C.) NO. _____ OF 2020]

Rafiq & Others _____***Petitioner No. 1***

v.

State of Uttam Pradesh _____***Respondent No. 1***

----------AND----------

[WRIT PETITION (CRIMINAL M.C.) NO. _____ OF 2020]

Viraj & Others _____***Petitioner No. 2***

v.

State of Uttam Pradesh _____***Respondent No. 1***

MEMORIAL ON BEHALF OF PETITIONERS

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LIST OF ABBREVIATIONS

&	*And*
§	*Section*
¶	*Paragraph*
AIR	*All India Reporter*
Anr.	*Another*
Art.	*Article*
Cr LJ	*Criminal Law Journal*
Cr.P.C.	*Code of Civil Procedure*
d/o	*Daughter of*
ed.	*Edition*
F.I.R.	*First Information Report*
Govt.	*Government*
Hon'ble	*Honourable*
I.P.C.	*Indian Penal Code*
Id.	*Idem*
MANU	*Manupatra*
No.	*Number*
No.	*Number*
Ors.	*Others*
p.	*Page*

PIL	*Public Interest Litigation*
s/o	*Son of*
SC	*Supreme Court*
SCC	*Supreme Court Cases*
Sec.	*Section*
u/s	*Under Section*
v.	*Versus*

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STATEMENT OF JURISDICTION

The Petitioners have approached the Hon'ble High Court of Uttam Pradesh under ***Article 226(1)***[1] of the Constitution of Indiana read with ***Section 482***[2] of the Criminal Procedure Code, 1973.

[1] ***Article 226: Power of High Court to issues certain writs.***__(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including the writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto*, and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

[2] ***Section 482: Saving of inherent powers of High Court.***__ Nothing in this Code shall be deemed to limit or affect the inherent powers 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.

STATEMENT OF FACTS

BACKGROUND

1. That, Noor *d/o* Petitioner No. 1 was lawfully married to Ajay *s/o* Petitioner No. 2 who was a worker at Merchant Navy under Special Marriage Act, 1954. Their marriage was solemnized on April 30th, 2016 at Sampur (a metropolitan city in the State of Uttam Pradesh).

2. That, since the day of marriage Noor lived with her in-laws including Petitioner No. 2, her mother-in-law, and brother-in-law in their matrimonial house at Sampur.

CAUSE OF ACTION

1. That, both the families were not happy with the matrimonial tie between Noor and Ajay. Noor had complaints about the indifferent attitude of her in-laws towards her.

2. That, in April, 2020 Ajay lost his job and started living with Noor and his family members.

3. That, on May 8, 2020 Ajay's parents abused Noor and harassed her physically and the same continued for several months. Noor used to tolerate the harassment in order to save her matrimonial tie with Ajay and she tried to mitigate the issues but the nature of Ajay's parents gradually changed and they continued abusing her physically as well as mentally.

4. That, Ajay supported Noor but was not able to go against his parents. Owing to this he felt useless and was undergoing through a lot of mental trauma. Due to the stress, he developed the habit of drinking alcohol and used to return home late. Thereafter, his attitude towards Noor also changed which further curdled their relationship.

5. That, on November 10, 2020, Noor left her matrimonial home and took a room in the vicinity on rent and committed suicide by hanging herself on the same day. She also left a suicide note stating that how she has been forced to commit suicide by her husband and her in laws. She further also mentioned about the demand of dowry at the behest of her father and mother-in-law.

6. That, on November 14, 2020 Petitioner No. 1 went to the Sampur Police Station and lodged a complaint against Ajay and his family members i.e. Petitioner No. 2 as soon as he got the information that Noor has committed suicide under Sec. 3, 4 of the Dowry

Prohibition Act, 1961 and Sec. 304-B, 498-A of the Indiana Penal Code, 1860 vide Case Crime No. 2412/2020.

7. That, on November 14, 2020 Ajay also committed suicide without knowing the fact about the death of his wife Noor and also left a suicide note stating that he is committing suicide because of the mental torture that he was subjected to by Noor and her relatives. Thereafter, on account of the said suicide note an F.I.R. was lodged at the Sampur Police Station by Petitioner No. 2 against Noor's family members i.e. Petitioner No. 1 under Sec. 323, 504 and 306 of the Indiana Penal Code, 1860 vide Case Crime No. 2417/2020.

8. That, the Petitioner No. 1 has approached the Hon'ble Court seeking that the F.I.R. lodged against him and his family members by Petitioner No. 2 shall be quashed.

9. That, the Petitioner No. 2 has approached the Hon'ble Court seeking that the F.I.R. lodged against him and his family members by Petitioner No. 1 shall be quashed.

STATEMENT OF ISSUES

I.

1. **WHETHER THE HON'BLE COURT HAS JURISDICTION TO ENTERTAIN THE WRIT PETITIONS?**

II.

2. **WHETHER THE GROUNDS FOR QUASHING THE F.I.R ARE MADE OUT?**

2A. WHETHER THE GROUNDS FOR QUASHING THE F.I.R AGAINST PETITIONER NO. 2 REGISTERED AS CASE CRIME NO. 2412/2020 ARE MADE OUT?

2B. WHETHER THE GROUNDS FOR QUASHING THE F.I.R AGAINST PETITIONER NO. REGISTERED AS CASE CRIME NO. 2417/2020 ARE MADE OUT?

III.

3. **WHETHER THE INGREDIENTS OF SECTION 304B AND OTHER SECTIONS ARE SATISFIED IN F.I.R. REGISTERED AS CASE CRIME NO. 2412/2020?**

IV.

4. **WHETHER THE INGREDIENTS OF SECTION 306 AND OTHER SECTIONS ARE SATISFIED IN F.I.R. REGISTERED AS CASE CRIME NO. 2417/2020?**

SUMMARY OF ARGUMENTS

1. THAT THE HON'BLE HIGH COURT HAS JURISDICTION TO ENTERTAIN THE WRIT PETITIONS FILED BY PETITIONER NO. 1 AND PETITIONER NO. 2

It is most humbly submitted that the High Court has unstinted powers under Art. 226 of the Constitution of Indiana and Sec. 482 of Cr.P.C. to exercise its jurisdiction in the instant case. The "*cause of action*" has arisen within the territorial jurisdiction of the Hon'ble Court. The litigants were devoid of any other 'efficacious' alternative remedy but to approach the Hon'ble Court to meet the '*ends of justice*'. There has been no inordinate delay in approaching the Hon'ble Court. The Hon'ble Court has power to entertain these petitions despite of the facts that the case considers disputed 'questions of fact' since the case is concerned with violation of principles of natural justice. It is therefore contended that the Hon'ble Court must play the role of "*sentinel on the qui vive*" and impart justice to the *bonafide* litigants.

2. THAT THE GROUNDS FOR QUASHING THE F.I.R. ARE MADE OUT

The Counsel for Petitioner No. 2 most humbly submits that the allegations in the F.I.R. against the Petitioner No. 2 do not *prima facie* constitute any of the alleged offences. The evidence collected in support of the allegations does not discloses commission of any of the offences and nor any other substantial evidence has been adduced to corroborate the commission of the alleged offences. Thus, there is no sufficient ground to proceed against the accused Petitioner. It is therefore humbly contended that the grounds for quashing the F.I.R. No. 2412/2020 are made out and the said F.I.R. must be quashed.

The Counsel for Petitioner No. 1 most humbly submits that the allegations in the F.I.R. against the Petitioner No. 1 do not *prima facie* constitute any of the alleged offences. The evidence collected in support of the allegations does not discloses commission of any of the offences and nor any other substantial evidence has been adduced to corroborate the commission of the alleged offences. Thus, there is no sufficient ground to proceed against the accused Petitioner. It is therefore humbly contended that the grounds for quashing the F.I.R. No. 2417/2020 are made out and the said F.I.R. must be quashed.

3. THAT THE INGREDIENTS OF SECTON 304-B AND OTHER SECTIONS ARE NOT SATISFIED IN F.I.R REGISTERED AS CASE CRIME NUMBER 2412/2020

It is most humbly submitted that Petitioner No. 2 never raised any demand for dowry and that Noor was never subjected to cruelty or harassment "*soon before her death*". The suicide is devoid of evidentiary value in absence of sufficient direct evidence to corroborate the commission of the alleged offences. There is no perceptible nexus between the death of the deceased and the alleged cruelty she alleged to be inflicted to. It is therefore contended that the essential ingredients of Sec. 304-B, 498-A of I.P.C. and Sec. 3 & 4 of the Dowry Prohibition Act, 1961 are not duly satisfied and are established beyond any reasonable doubt. Thus, the accused Petitioner is entitled to "*benefit of doubt*" in absence of sufficient evidence.

4. THAT THE INGREDIENTS OF SECTION 306 AND OTHER SECTIONS ARE NOT SATISFIED IN THE F.I.R. REGISTERED AS CASE CRIME NUMBER 2417/2020

It is most humbly submitted that the essential ingredients of Sec. 323 are not satisfied since neither Petitioner No. 1 had any intention to hurt Ajay nor has he hurt him through any of his conduct. Ingredients of Sec. 504 are also not satisfied since neither Petitioner No. 1 had any intention to insult Ajay nor has he insulted Ajay in any manner whatsoever. Ingredients of Sec. 306 are also not duly sufficed since the acts of Petitioner No. 1 do not have any direct nexus with the commission of suicide by Ajay. It is therefore humbly contended that the F.I.R. against Petitioner No. 1 must be quashed.

ARGUMENTS ADVANCED

[1.] THAT THE HON'BLE HIGH COURT HAS JURISDICTION TO ENTERTAIN THIS WRIT PETITION

"*Rancour of injustice hurts an individual leading to bitterness, resentment and frustration and rapid evaporation of the faith in the institution of judiciary*[3]". It is most humbly submitted before the Hon'ble Court that: (1) *firstly*, the Hon'ble Court has power to exercise its jurisdiction in the instant case under Article 226 of the Constitution of Indiana **[1.1]**; and (2) *secondly*, Section 482 of the Cr.P.C. bestows unstinted and unquestionable power on the Hon'ble Court to issue any writ, order or directions deemed appropriate in the instant case **[1.2]**. The counsels on behalf of Petitioner No. 1 and Petitioner No. 2 therefore humbly contend that the writ petitions at hand are amenable to the jurisdiction of the Hon'ble Court and humbly request the Hon'ble Court to play the role of "*sentinel on the qui vive*[4]" and impart justice to the litigants.

[1.1] THAT THE HON'BLE HIGH COURT HAS POWER TO EXERCISE ITS JURISDICTION IN THE INSTANT CASE UNDER ARTICLE 226

It is most humbly submitted that Art. 226 of the Constitution of Indiana indelibly confers the power to issue orders, directions[5] or writs including, *inter alia*, the prerogative writs, to any person or government throughout the territories in relation to which it exercises jurisdiction not only for enforcement of rights guaranteed under Part III of the Constitution but also "*for any other purpose*".[6]

The clause "*for any other purpose*" was interpreted in the case of ***T.C. Basappa v. Nagappa***[7] the Hon'ble Supreme Court held that Art. 226 is couched in comprehensive phraseology and it confers a wide power on the High Courts to remedy injustice wherever it is found.[8] It thus not only guarantees fundamental rights but also guarantees the legal rights of every citizen. Further the Hon'ble Supreme Court in the case of ***R.P. Kapur v. State of Punjab***[9] and ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.***[10] held that the inherent

[3] S.P. Gupta v. Union of India & Anr., Transfer Case (Civil) 19 of 1981 (SC).
[4] Hussaianara Khatoon & Ors. v. Home Secretary, State of Bihar & Ors., AIR 1979 SC 1369.
[5] Aruna Ramchandran Shanbaug v. Union of India, AIR 2011 SC 1290.
[6] INDIA CONST., art. 226 cl. 1.
[7] T.C. Basappa v. Nagappa, AIR 1954 SC 440; Dwarkanath v. I.T.O., AIR 1966 SC 81.
[8] J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 653 (Central Law Agency, 2020).
[9] R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
[10] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021.

jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the '*abuse of process*' or otherwise to secure the '*ends of justice*'. Thus, it can be inferred that quashing of F.I.R. is one of the inherent powers of the Hon'ble Court under Art. 226 of the Constitution of Indiana. It is appositely remarked that[11],

> "*All courts, whether civil or criminal, posess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo the wrong in course of administration of justice on the principle "quando lex aliquid alique concedit, concenditur et id sine quo res ipsa esse non potest" which means that 'when the law gives a person anything, it gives him that without which it cannot exist'*."

It is further submitted that for the Court to exercise its powers under Art. 226 certain pre-requisites are to be considered:[12] *firstly*, the "*cause of action*" shall arise within the territorial jurisdiction of the Hon'ble Court[13] **[1.1.1]**; *secondly*¸ there shall be no inordinate delay in filing the petition[14]**[1.1.2]**; *thirdly*, there shall be no efficacious alternative remedy available other than approaching the Hon'ble Court to meet the "*ends of justice*"[15] **[1.1.3]**; *fourthly*, there shall be no disputed question of fact[16] **[1.1.4]**; and *fifthly*, there shall be violation of laws of natural justice[17] **[1.1.5]** & that the action must not be derived by *malafides*, and *lastly*, all the material facts shall be revealed in the petition[18] **[1.1.6]**.

[1.1.1] *<u>That the "cause of action" has arisen within the jurisdiction of the Hon'ble Court</u>*

It is known that Sec. 2 (j) of the Cr.P.C. defined "*local jurisdiction*" of a Court as the local area within which the Court may exercise its powers under the Code, in part or in whole, and such local area may comprise the whole of the State or any part of it as the State Government may notify.[19] The Hon'ble High Court of Uttam Pradesh exercises its jurisdiction throughout

[11] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.
[12] City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168.
[13] Election Commission of India v. Saka Venkata Rao, AIR 1953 SC 210.
[14] Durga Prasad v. Chief Controller, AIR 1970 SC 845; Municipal Council Ahmednagar v. Shah Hyder Baig, AIR 2000 SC 671; Bangalore City Co-operative Housing Society Ltd. v. State of Karnataka, 2012 AIR SC 1395; Anil Kumar Gupta v. State of Bihar, (2012) 12 SCC 443.
[15] Rashid Ahmed v. Income Tax Investigation Commission, AIR 1954 SC 207; C.A. Abraham v. I.T. Officer, AIR 1961 SC 609.
[16] Burmah Construction Company v. State of Orissa, AIR 1962 SC 1320; Real Estate Agencies v. Government of Goa, AIR 2012 SC 3848; ABL Inernational Ltd. v. Export Credit Grant Corporation of India, (2004) 3 SCC 533; Gunwant Kaur v. Municipal Committee, Bhatinda v. AIR 1970 SC 802.
[17] National Textitles Workers v. P.R. Ramkrishnan, AIR 1983 SC 75.
[18] City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168.
[19] The Code of Criminal Procedure, 1973, § 2 (j) No. 2, Acts of Parliament, 1974 (India).

the State of Uttam Pradesh including the city of Sampur.[20] It is also explicit in the facts that Noor and Ajay committed suicide in Sampur which falls unswervingly within the territorial jurisdiction of the Hon'ble Court. It can thus be concluded that the "*cause of action*" arose within the territorial jurisdiction of the Court.

[1.1.2] *That no inordinate delay has been caused in approaching the Hon'ble Court*

It is well settled that an inordinate delay in making the motion under Art. 226 may be a good ground for refusing to exercise discretionary jurisdiction.[21] It is most humbly submitted that both Petitioner No. 1 and Petitioner No. 2 have approached the Hon'ble Court within shortest possible reasonable time from the date on which the "*cause of action*" arose.[22]

[1.1.3] *That there exists no other efficacious alternative remedy except for approaching the Hon'ble Court to meet the 'ends of justice'*

Principle of exhaustion of alternative statutory remedy is a rule of discretion and prudence and not a rule of law.[23] It is well settled that the remedy provided under Article 226 is discretionary and the Hon'ble Court may refuse to entertain the petition if it is satisfied that an effective alternative remedy is available through which the aggrieved party may seek relief[24] but the exhaustion of alternate remedies is no bar to invocation of writ jurisdiction when "*gross injustice*" is caused, "*rule of law*" is violated[25], the principles of natural justice are besmirched & violated and if the Court arrives at a finding which is 'perverse' or is based on no material[26]. The Hon'ble Apex Court in ***Harbansal Sahnia v. Indian Oil Corporation Ltd.***[27] appositely affirmed that in spite of availability of alternative remedies the High Court may still exercise its jurisdiction when there is failure of principles of natural justice or where the proceedings are wholly without the *vires* or an Act is challenged.[28] But later in the case of ***Vijay v. State of Maharashtra***[29] it was held that *mere* availability of alternative remedy cannot be a ground to disentitle relief under Sec. 482 of the Cr.P.C.[30]

[20] *Moot Proposition*.
[21] Durga *Supra* note 12.
[22] *Moot Proposition*.
[23] Balkrishna Ram v. Union of India and Ans., (2020) 2 SCC 442.
[24] Central Coalfields Ltd. v. State of Jharkhand, AIR 2005 SC 3425.
[25] Union of India v. Tantia Construction (P) Ltd., (2011) 5 SCC 697.
[26] D.D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 352 (LexisnNexis Butterworths Waghwa Nagpur, 2018)
[27] Harbansal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107.
[28] PROFESSOR S.R. BHANSALI, THE CONSTITUTION OF INDIA 552 (Universal Publishing, 2015)
[29] Vijay v. State of Maharashtra, (2017) 3 SCC 317.
[30] Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30; Mohit v. State of U.P., (2013) 7 SCC 789.

The counsel for Petitioner No. 2 most humbly submits that not only the principles of natural justice are violated **[1.1.6]** but also no other alternative efficacious remedy is available with the petitioner to seek relief but to knock the doors of the Hon'ble Court. Although this verity cannot be refuted that the Petitioner could have filed an application of '*dismissal of complaint*' before the Hon'ble Court of Sessions under Sec. 203 of Cr.P.C. or could have applied for '*anticipatory bail*' under Sec. 438 of Cr.P.C. to apprehend arrest or could have applied for '*discharge*'[31] & argued for acquittal before the trial court under Sec. 239 of Cr.P.C. but it is necessary that the remedy available must be '*efficacious*'[32]. Efficacy of a remedy depends on the attendant facts and circumstances. The poor litigants who lost their son and daughter-in-law do not deserve to suffer incarcerations by getting lynched in the Court rooms in quest of justice. It is already submitted that their son 'Ajay' lost his job amidst pandemic[33] and they were suffering financially thus the aforesaid remedies will not only deny them the right to access to justice but would also make them suffer fiscally. *A fortiori*¸ these reasons are *ex facie* sufficient to hold that all the aforesaid remedies are *per se* '*non-efficacious*'.

The counsel for Petitioner No. 1 most humbly submits that the petitioner had no other alternative efficacious remedy available with them to seek relief which compelled them to approach the Hon'ble Court as the last resort. Although this verity cannot be refuted that the Petitioner could have filed an application of '*dismissal of complaint*' before the Hon'ble Court of Sessions under Sec. 203 of Cr.P.C. or could have applied for '*anticipatory bail*' under Sec. 438 of Cr.P.C. to apprehend arrest or could have sought '*discharge*' under & argued for acquittal before the trial court under Sec. 239 of Cr.P.C. but it is it is necessary that the remedy available must be '*efficacious*'[34]. Efficacy of a remedy depends on the attendant facts and circumstances. The accused litigants have not only lost their loved daughter but also their son-in-law. In these tough times it is not in the interest of justice to allow a criminal proceeding against *bonafide* petitioners when no *prima facie* case is made out against the petitioners even if all the allegations are accepted *in toto* as is further contended in **[2B]**, **[4]** that too in absence of sufficient evidence to corroborate the offences alleged. In such a situation longing for justice while ransacking through court rooms does not

[31] National Spot Exchange Ltd. v. State of Maharashtra & Ors., 2015 SCC OnLine Bom 6583, ¶ 15; Babusingh Pokarsingh Rajpurohit v. State of Maharashtra & Ors., 2016 SCC OnLine Bom 1484; K.N. Mutyala Rao v. Export Inpection Council of India & Ors., 2010 SCC OnLine Mad 2497.
[32] Balkrishna Ram v. Union of India and Ans., (2020) 2 SCC 442.
[33] *Moot Proposition*.
[34] Balkrishna Ram v. Union of India and Ans., (2020) 2 SCC 442.

seems in parlance with the principles of natural justice **[1.1.6]** and the right to 'access to justice'. Thus, it can be aptly inferred that there lies no efficacious alternative remedy with the Petitioners to seek relief and renders sufficient cause for the Hon'ble Court to interfere.

[1.1.4] *That the Court has power to entertain petitions considering disputed questions of facts in certain cases*

It is further submitted that although the High Court is barred from entertaining petitions considering disputed '*questions of fact*' but there is no universal rule or principle of law which debars the writ court from entertaining such adjudications and the Court can thus exercise its jurisdiction where it deems it necessary in light of justice, equity and good conscience given the attendant facts and circumstances.[35]

It was also held in the case of ***State of A.P. v. Golconda Linga Swamy***[36] that when no offence is disclosed by the complaint, the court may examine the '*question of fact*'. It was further affirmed in the judgement that when a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted *in toto*.[37]

The Counsel for Petitioner No. 2 humbly contends that the allegations made against the petitioners in F.I.R. No. 2412/2020 do not *prima facie* constitute any offence under Sec. 3, 4 of Dowry Prohibition Act, 1961 and Sec. 304-B, 498-A of the I.P.C. in absence of 'sufficient evidence' to corroborate the offence alleged as is contended further in **[2A]**, **[3.1]**, **[3.2]**, & **[3.3]** since none of the essential ingredients to attribute criminal liability upon the petitioner under the aforesaid provisions are made out.

The Counsel for Petitioner No. 1 humbly contends that that the allegations made against the petitioners in F.I.R. No. 2412/2020 do not *prima facie* constitute any offence under Sec. 323, 504 & 306 of the I.P.C. in absence of 'sufficient evidence' to corroborate the offence alleged as is contended further in **[2B]**, **[4.1]**, **[4.2]**, & **[4.3]** since none of the essential ingredients to attribute criminal liability upon the petitioner under the aforesaid provisions are made out.

Although the instant case considers disputed questions of fact but it will be gross injustice with the petitioners to deny entertaining their petitions solely on this frivolous technical

[35] Burmah *Supra* note 14.
[36] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.
[37] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021.

ground since when it is apparent that no *prima facie* case is made out against them, as is also contended further in **[2]**, the Court must interfere to ensure justice.

[1.1.5] *That there has been violation of principles of natural justice and rule of law*

"*The doctrine of natural justice is a facet of fair play in action and no person shall be saddled with a liability without being heard*".[38] It is most humbly submitted that the Hon'ble Court is entitled with the power to intervene where the principles of natural justice are violated.[39] One of the principles of natural justice is *audi alteram partem* which means '*no man should be condemned unheard*'.[40] This principle ensures '*right to fair trial*' and '*right to access to justice*'. However, the Supreme Court in the case of ***Union of India v. W.N. Chadha***[41] held that the rule of *audi alteram partum* may be jettisoned only "*in very exceptional circumstances where compulsive necessity so demands* and not to "*defeat the ends of justice*". It was further held that the petitioner must show that they have suffered from the denial of reasonable opportunity.[42]

The Counsel for Petitioner No. 2 most humbly contends that the petitioners have been charged with cognizable and non-bailable offences under Sec. 304-B, 498-A of I.P.C. which concomitantly make out a warrant case against the petitioners which makes it explicit that the petitioners will be arrested even before appearing in the trial court *merely* on the basis of the complaint and the "suicide note" adduced as evidence. This is not palatable with the principles of criminal jurisprudence since the petitioners are being condemned on the basis of insufficient evidence and the allegations made in the F.I.R. which do not *prima facie* prove the commission of any of the aforesaid offence as is contended in **[2A]** & **[3]**. This is *per se* strict violation of the principle of *audi alteram partem* as the petitioners are being denied opportunity of being heard before any strict actions are taken against them.

The Counsel for Petitioner No. 1 most humbly contends that the allegations made in the F.I.R. and the "suicide note" written by Ajay which was collected in support of the accusations do not *prima facie* constitute a case of the commission of any offence under Sec. 323, 504 or 306 of I.P.C. as is contended further in **[2B]** & **[4]**. Where it is explicit from the attendant facts and circumstances that no *prima facie* case is being made out and the accused is locked up or is subjected to incarcerations of the justice administration system merely on

[38] Thakur v. Hariparsad v. C.I.T., (1987) 32 Taxman 196 (AP).
[39] *Id.*
[40] *Id.*
[41] Union of India v. W.N. Chadha, AIR 1993 SC 1082.
[42] Chairman Mining Board v. Ramjee, 1977 AIR 965 SC.

the basis of the complaint then it will be strict violation of the aforesaid principle of natural justice and the rule of law. In such a situation issuing of process against the accused without giving any opportunity to be heard is in against the principles of natural justice.

The present case divulges the need to reiterate that "*access to justice*" is quintessential for the '*rule of law*' and no Court other than the Hon'ble Court holds the power to do justice in the instant case. The counsels thus plead maintainability of the instant writ petitions.

[1.1.6] *That the action is not derived out of malafides and all the material facts are completely disclosed herewith*

The Counsel for Petitioner No. 2 most humbly contends that the Petitioners have not approached the Hon'ble Court with a malicious intent but instead to ensure their right to access to justice when it is apparent from the facts and circumstances placed on record that no *prima facie* case is made out as is contended in further arguments. Although the opposing counsels may contend that the petitioners intend to apprehend arrest but to this it is humbly submitted that when the petitioners are innocent then they are vested with the right to seek justice from the Hon'ble Court.

The Counsels for Petitioner No. 1 most humbly contends that the Petitioners have approached the Hon'ble Court without any *malafides* and to seek relief from the Court. Where it is apparent from the facts and evidences on record that no *prima facie* case is made out and it is known that unnecessary proceedings are more likely to waste the precious time of the trial courts, the Hon'ble Court may interfere and impart justice by quashing the F.I.R. Thus, it is explicit that the petitioners have approached to enforce their right to access to justice and not out of *malafides*.

[1.2] THAT SECTION 482 OF CR.P.C. BESTOWS UNSTINTED & UNQUESTIONABLE INHERENT POWER ON THE HON'BLE COURT TO QUASH PROCEEDINGS IN THE INSTANT CASE

It is most humbly submitted that Sec. 482 of the Cr.P.C. states that,

> "*Nothing in this code shall be deemed to limit or affect the inherent powers 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 in any Court or otherwise to secure the ends of justice*."

It is well settled that the inherent jurisdiction of the High Court under Sec. 482 can be exercised to quash proceedings in a proper case either to "*prevent the abuse of process*' of any court or otherwise to secure the "*ends of justice*"[43] and bestows unstinted and 'unquestionable' power on the High Courts[44].

The Apex Court in the case of ***State of Telangana v. Habib Abdullah Jeelani***[45] held that the powers under Sec. 482 of Cr.P.C. or under Art. 226 of the Constitution to quash the first information report is to be exercised in a very '*sparing manner*' and it is not to be used to choke or smother the prosecution that is '*legitimate*'. It was further stated in the aforesaid decision that inherent powers do not confer an arbitrary jurisdiction on the High Courts to act according to '*whim or caprice*' and that such power has to be exercised sparingly, with circumspection and in the '*rarest of the rare cases*'. It thus casts an onerous and more diligent duty on the Court.[46]

[1.2.1] *That the Prosecution is Not 'Legitimate'*

It was settled in the case of ***State of A.P. v. Golconda Linga Swamy*** that the inherent power of the Court should not be exercised to stifle a legitimate prosecution and that exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is '*frivolous, vexatious or oppressive*'.[47]

The Counsels for Petitioner No. 2 most humbly contends that prosecution against the Petitioners is not legitimate as none of the ingredients of the offences charged are constituted as is further contended in **[2A]** & **[3]**. When *ispo facto* it is explicit that no case is formed and that the allegations do not *prima facie* constitute any offence then there stands no legal ground to hold such prosecution as '*legitimate*'.

The Counsels for Petitioner No. 1 most humbly contends that prosecution against the Petitioners is not legitimate as none of the ingredients of the offences charged are constituted as is further contended in **[2B]** & **[4]**. When *ispo facto* it is explicit that no case is formed and

[43] R.P. Kapur v. State of Punjab, AIR 1960 SC 866; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021
[44] Imtiyaz Ahmad v. State of Uttar Pradesh, (2012) 2 SCC 688; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021.
[45] State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779.
[46] Kurukshetra University v. State of Haryana, (1977) 4 SCC 451; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021.
[47] State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522.

that the allegations do not *prima facie* constitute any offence then there stands no legal ground to hold such prosecution as '*legitimate*'.

[1.2.2] *That the instant case falls within the ambit of 'Rarest of the rare cases'*

It is most humbly submitted that the inherent powers under Sec. 482 can be exercised only in the "*rarest of the rare cases*". It is thus important to show that the case is of exceptional nature.[48] It is also well settled that a case becomes an '*exceptional case*' when the grounds laid down in the cases of ***State of Haryana v. Bhajan Lal***[49]***, R.P. Kapur v. State of Punjab***[50] *and* ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque***[51] are satisfied. The grounds are as follows;

> "*(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
>
> *(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
>
> *(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*"

The Counsels for Petitioner No. 2 most humbly contends that the allegations in the F.I.R. 2412/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[2A]** & **[3]**. It is thus manifest from the facts and circumstances that the instant case falls within the category of "*rarest of rare cases*".

The Counsels for Petitioner No. 1 most humbly contends that the allegations in the F.I.R. 2417/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also contended in

[48] Resurfacing of Road Agency Private Ltd. v. Central Bureau of Investigation, (2018) 16 SCC 299.
[49] State of Harayana v. Bhajan Lal, 1992 Supp (1) SCC 335.
[50] R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
[51] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122.

[2B] & **[4]**. It is thus manifest from the facts and circumstances that the instant case falls within the category of "*rarest of rare cases*".

[1.2.3] *That the it will be gross injustice to allow the 'issue of process'*

It is most humbly submitted that the Apex Court in the case of ***State of Karnataka v. L. Muniswamy***[52] observed that the High Court in its inherent powers 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.[53] In the aforesaid decision it was further held that where a criminal proceeding initiated pursuant to the F.I.R is nothing but an '*abuse of process of law*' and/or the same is wholly without jurisdiction or where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged or where the allegations in the F.I.R. even if they are taken at the face value and accepted in their entirety, do not constitute the offence alleged and exceptional case being made out on the grounds laid down in the cases of ***Bhajan Lal***[54], ***R.P. Kapur***[55] *and* ***Zandu Pharmaceutical Works Ltd.***[56], by giving brief reasons, the High Court will be justified in quashing the F.I.R.[57]

The Counsels for Petitioner No. 2 most humbly contends that it will be gross injustice to allow the issue of process under Sec. 204 of Cr.P.C. against the petitioners the allegations in the F.I.R. 2412/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[2A]** & **[3]**. The Hon'ble Court is thus humbly prayed to grant relief to the petitioners to meet the ends of justice.

The Counsels for Petitioner No. 1 most humbly contends that it will be gross injustice to allow the issue of process under Sec. 204 of Cr.P.C. against the petitioners the allegations in the F.I.R. 2412/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also

[52] State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699.
[53] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021
[54] State of Harayana v. Bhajan Lal, 1992 Supp (1) SCC 335.
[55] R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
[56] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122.
[57] *Id*, ¶ 4.7.

contended in **[2B]** & **[4]**. The Hon'ble Court is thus humbly prayed to grant relief to the petitioners to meet the ends of justice.

[1.2.4] *That the Hon'ble Court is justified in exercising its powers under Section 482*

It is most humbly submitted that in the case of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.***[58] the Hon'ble Supreme Court observed that High Courts are not allowed to exercise power under Sec. 482 in regard to matters specifically covered by other provisions of the Code. Since, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, the High Court would refrain from interfering with the said proceedings at an interlocutory stage. Thus, the Hon'ble Court carved out some exceptions of the aforesaid rule as follows;

> "*(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.*
>
> *(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.*
>
> *(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question…*"

It was further affirmed in the case of ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans.***[59] that no hard and fast rule can be laid down for exercise of this extra-

[58] *Id.*
[59] Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque and Ans., (2005) 1 SCC 122.

ordinary jurisdiction and it is the utter discretion of the Hon'ble High Court to use its powers to impart justice.[60]

The Counsel for Petitioner No. 2 most humbly submits that the allegations in the F.I.R. 2412/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[2A]** & **[3]**. The suicide note written by Noor is devoid of evidentiary value in absence of other direct evidences to corroborate the commission of offence alleged as is contended further. Thus, it is vehemently contended that the Hon'ble Court is justified to exercise its powers under Sec. 482.

The Counsel for Petitioner No. 1 most humbly submits that the allegations in the F.I.R. 2412/2020 do not constitute any offence even if taken at their face value and at their entirety as neither the ingredients of any of the alleged offences are sufficed nor any direct and sufficient evidence has been adduced in support of the allegations as is also contended in **[2B]** & **[4]**. The suicide note written by Ajay is devoid of evidentiary value in absence of other direct evidences to corroborate the commission of offence alleged as is contended further. Thus, it is vehemently contended that the Hon'ble Court is justified to exercise its powers under Sec. 482.

[2.] THAT THE GROUNDS FOR QUASHING THE F.I.R. ARE MADE OUT

It is most humbly submitted that the Hon'ble High Court is justified in quashing the F.I.R. only when the case falls within the ambit of either of the case conditions illustrated in the landmark case of ***State of Haryana v. Bhajan Lal***[61] and when the essentials established in the aforesaid case are duly sufficed. In the aforesaid decision the Court identified the following cases in which F.I.R can be quashed:

> "*102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

[60] Janata Dal v. H.S. Chowdary, (1992) 4 SCC 305; Dr. Raghubir Saran v. State of Bihar, AIR 1964 SC 1.
[61] State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, ¶60,61,102,103.

(2) Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings 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."

Also, the grounds to justify quashing of criminal proceedings were also laid down in the case of ***Rajiv Thapar v. Madan Lal Kapoor***[62], the High Court is required to undertake step-wise enquiry as mentioned in Para 30 of the decision and if answer to all the questions are in affirmative, the High Court would be justified in quashing the criminal proceedings.[63] Thus,

[62] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.
[63] Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors., Crimial Appeal (SC) No. 330/2021; State of U.P. V. Mohammad Naim, AIR 1964 SC 703; State of Andhra Pradesh v. Gourishetty Mahesh, (2010) 11

to determine the veracity of a prayer for quashment raised by the accused by invoking the power vested in the High Court under Sec. 482, the Court must pay regard to the following[64];

> "***30.1.*** *Step one: whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?*
>
> ***30.2.*** *Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?*
>
> ***30.3*** *Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*
>
> ***30.4*** *Step four: whether proceeding with the trial court would result in an abuse of process of the court, and would not serve the ends of justice?*"

If answer to all the aforesaid steps is in the affirmative then the High Court will be justified in exercising its powers under Sec. 482 for quashing the F.I.R. registered against the accused.[65]

It is further submitted that a case becomes '*prima facie*' case when all essentials ingredients of the alleged offence are present as per the statements & evidences recorded under Sec. 200 or 202 Cr.P.C. and as per investigation report (if any) prepared by an investigation agency u/s 202 Cr.P.C. If all the essential ingredients are satisfied then '*sufficient ground*' for proceedings is made out.[66]

[2A.] THAT THE GROUNDS FOR QUASHING THE FIR REGISTERED AS 2412/2020 ARE MADE OUT

The Counsel on behalf of Petitioner No. 2 most humbly submits that: *firstly*, the allegations in the F.I.R. No. 2412/2020 do not *prima facie* constitute any offence **[2A.1]**; *secondly*, the evidence collected in support of the allegations does not disclose the commission of the

SCC 226; Vijeta Gajra v. State of NCT Delhi, (2010) 11 SCC 618; State of Maharashtra v. Sanjay Dalmia, (2015) 17 SCC 539; Amish Devgan v. Union of India, (2021) 1 SCC 1.

[64] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.

[65] Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330.

[66] Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923.

offence **[2A.2.]**; *thirdly*¸ there is no sufficient ground to proceed against the accused petitioners **[2A.3]** and *lastly*, the criminal proceedings against the accused petitioners are maliciously motivated **[2A.4]**. It is therefore most humbly contended that the grounds for quashing the F.I.R. registered against the petitioners as case crime no. 2412/2020 are made out.

[2A.1] THAT THE ALLEGATIONS DO NOT PRIMA FACIE CONSTITUTE ANY OFFENCE

It is most humbly submitted that as per Black's Law Dictionary a case is said to be a '*prima facie* case' when the case is "*established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side*".[67] It is also well settled that a case becomes a *prima facie* case when all the ingredients of the alleged offence are sufficed.[68] In the instant case neither of the ingredients of any of the offences are sufficed by the allegations made in the F.I.R. No. 2412/2020 as is contended further in **[3.1]**, **[3.2]** & **[3.3]**. The allegations made are not adduced with sufficient evidence to support them which excludes the instant case from the arena of *prima facie* cases.

[2A.2] THAT THE EVIDENCE COLLECTED IN SUPPORT DOES NOT DISCLOSE THE COMMISSION OF THE OFFENCE

It is most humbly submitted that in ***State of Kerela & Ors v. S. Unnikrishnan Nair and Ors.***[69] the Hon'ble Supreme Court observed that if the allegations stated in the suicide note against the respondents are "*really vague*" and the suicide note did not really state about any continuous conduct of harassment then no *prima facie* can be made out against the respondents. The Court held the order for quashing the F.I.R. against the respondents was proper.

In the instant case also Noor has vaguely alleged harassment by her in-laws in the suicide note. There is nothing to support that she was being continuously harassed and mistreated that too with such gravity so as to induce her to commit suicide. Every person has a unique mental state and in such case confusing harassment with ordinary "*petulance, disorder and differences*[70]" and "*ordinary wear and tear of marriage*[71]" is not unlikely. Also, no sufficient evidence has been adduced to prove the demand for dowry. Merely statements of the

[67] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1353 (1968, West Publishing Co.)
[68] Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923.
[69] State of Kerela & Ors. v. S. Unnikrishnan Nair & Ors., 2015 Cr LJ 4495 (SC).
[70] Gangula Andhra Pradesh v. State of Andhra Pradesh, (2010) 1 SCC 750.
[71] Savitri Pandey v. Prem Chandra Pandey, MANU/SC/0010/2002.

interested witnesses i.e. Noor's parents cannot *per se* justify issue of process against the Petitioners.

[2A.3] THAT THERE IS NO SUFFICIENT GROUND TO PROCEED AGAINST THE ACCUSED

It is most humbly submitted that the Hon'ble Supreme Court in the case of ***S.W. Palanitkar & Ors. v. State of Bihar & Anr.***[72] held that the term "*sufficient grounds*" used in Sec. 203 of Cr.P.C. means satisfaction that the *prima facie* case is made out against the accused person and not sufficient ground for the purpose of conviction. When the act alleged against the accused doesn't constitute the offence satisfying the ingredients even *prima facie*, the process should not be issued. In the instant case since no *prima facie* case is made out as is contended in **[2A.1]** therefore in light of the aforesaid decision it is vehemently contended that there exist no "*sufficient grounds*" to allow the issue of process against the accused.

[2A.4] THAT THE CRIMINAL PROCEEDINGS ARE MALICIOUSLY MOTIVATED

It is most humbly submitted that the Petitioner No. 1 were never happy with the marriage of Ajay and Noor since the marriage was solemnised against their will and volition. This *per se* establishes a possibility of feeling of personal grudge and vengeance owing to which the Petitioner No. 1 is blaming Petitioner No. 2 for the unnatural demise of their deceased daughter. The prosecution against the Petitioner No. 2 is motivated by this personal grudge and vengeance and are thus malicious in disposition.

[2B.] THAT THE GROUNDS FOR QUASHING THE FIR REGISTERED AS 2417/2020 ARE MADE OUT

The Counsel on behalf of Petitioner No. 1 most humbly submits that: *firstly*, the allegations in the F.I.R. No. 2417/2020 do not *prima facie* constitute any offence **[2B.1]**; *secondly*, the evidence collected in support of the allegations does not disclose the commission of the offence **[2B.2.]**; *thirdly*, there is no sufficient ground to proceed against the accused petitioners **[2B.3]** and *lastly*, the criminal proceedings against the accused petitioners are maliciously motivated **[2B.4]**. It is therefore most humbly contended that the grounds for quashing the F.I.R. registered against the petitioners as case crime no. 2417/2020 are made out.

[72] S.W. Palnitkar & Ors. v. State of Bihar & Anr., AIR 2001 SC 2960.

[2B.1] THAT THE ALLEGATIONS DO NOT PRIMA FACIE CONSTITUTE ANY OFFENCE

It is most humbly submitted that as per Black's Law Dictionary a case is said to be a '*prima facie* case' when the case is "*established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side*".[73] It is also well settled that a case becomes a *prima facie* case when all the ingredients of the alleged offence are sufficed.[74] In the instant case neither of the ingredients of any of the offences are sufficed by the allegations made in the F.I.R. No. 2417/2020 as is contended further in **[4.1]**, **[4.2]** & **[4.3]**. The allegations made are not adduced with sufficient evidence to support them which excludes the instant case from the arena of *prima facie* cases.

[2B.2] THAT THE EVIDENCE COLLECTED IN SUPPORT DOES NOT DISCLOSE THE COMMISSION OF THE OFFENCE

It is most humbly submitted that in ***State of Kerela & Ors v. S. Unnikrishnan Nair and Ors.***[75] the Hon'ble Supreme Court observed that if the allegations stated in the suicide note against the respondents are "*really vague*" and the suicide note did not really state about any continuous conduct of harassment then no *prima facie* can be made out against the respondents. The Court held the order for quashing the F.I.R. against the respondents was proper. In the instant case also Ajay has vaguely alleged that Petitioner No. 1 has abetted him to commit suicide. To this it is submitted that Ajay was already mentally depressed and was bibulous. None of the actions of the Petitioner were of such gravity so as to abet Ajay to commit suicide. Further, in the case of ***Atul Kumar v. State of NCT, Delhi***[76] the Court held that merely making a complaint is not abetment of suicide. Thus, the evidence collected is not sufficient to disclose the commission of the offences alleged in F.I.R. No. 2417/2020.

[2B.3] THAT THERE IS NO SUFFICIENT GROUND TO PROCEED AGAINST THE ACCUSED

It is most humbly submitted that the Hon'ble Supreme Court in the case of ***S.W. Palanitkar & Ors. v. State of Bihar & Anr.***[77] held that the term "*sufficient grounds*" used in Sec. 203 of Cr.P.C. means satisfaction that the *prima facie* case is made out against the accused person and not sufficient ground for the purpose of conviction. When the act alleged against the accused doesn't constitute the offence satisfying the ingredients even *prima facie*, the process

[73] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1353 (1968, West Publishing Co.)
[74] Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923.
[75] State of Kerela & Ors. v. S. Unnikrishnan Nair & Ors., 2015 Cr LJ 4495 (SC).
[76] Atul Kumar v. State of NCT, Delhi, 2021 SCC OnLine Del 4107.
[77] S.W. Palnitkar & Ors. v. State of Bihar & Anr., AIR 2001 SC 2960.

should not be issued. In the instant case since no *prima facie* case is made out as is contended in **[2B.1]** therefore in light of the aforesaid decision it is vehemently contended that there exist no "*sufficient grounds*" to allow the issue of process against the accused.

[2B.4] THAT THE CRIMINAL PROCEEDINGS ARE MALICIOUSLY MOTIVATED

It is most humbly submitted that the Petitioner No. 1 were never happy with the marriage of Ajay and Noor since the marriage was solemnised against their will and volition. This *per se* establishes a possibility of feeling of personal grudge and vengeance owing to which the Petitioner No. 2 is blaming Petitioner No. 1 for the unnatural demise of their deceased son. The prosecution against the Petitioner No. 1 is motivated by this personal grudge and vengeance and are thus malicious in disposition.

[3.] THAT THE INGREDIENTS OF SECTON 304-B AND OTHER SECTIONS ARE NOT SATISFIED IN F.I.R REGISTERED AS CASE CRIME NUMBER 2412/2020

The Counsel for Petitioner No. 2 most humbly submits that: *firstly*, the ingredients of Sec. 3 & 4 of the Dowry Prohibition Act, 1961 are not satisfied **[3.1]**; *secondly*, the ingredients of Sec. 304-B are not satisfied **[3.2]**; and *lastly*, the ingredients of Sec. 498-A are not satisfied **[3.3]**. It is therefore contended that the F.I.R. registered against Petitioner No. 2 as case crime no. 2412/2020 is liable to be quashed in light of justice.

[3.1] THAT THE INGREDIENTS OF SECTION 3 AND 4 OF DOWRY PROHIBITION ACT, 1961 ARE NOT SATISFIED

It is most humbly submitted that Sec. 2 of the Dowry Prohibition Act, 1961 defines "*dowry*" as "*any property or valuable security given or agreed to be given either directly or indirectly*" by either of the parties to the marriage at or before or any time after the marriage "*in connection with the marriage*". Furthermore, Sec. 3 of the Act provides that,

> "*If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more*."

Also, Sec. 4 of the Act penalises the demand for such dowry, whether be direct or indirect, from the parents or other relatives of the bridegroom. It is explicit from the aforesaid provisions that for attributing criminal liability under Sec. 3 & 4 of the Act the following pre-

requisites are to be sufficed: *firstly*, there shall be some demand for any property or valuable security; *secondly*, such demand shall be made to the relatives of the bridegroom; *thirdly*, such dowry shall be given or taken at or before or any time after the date of marriage; and *fourthly*, such demand shall be "*in connection with the marriage*".[78]

It is humbly contended that no evidence other than the 'suicide note' has been produced to corroborate the demand for dowry and in absence of any substantial evidence establishing the demand for dowry the criminal liability under Sec. 3 & 4 of the Act cannot be attributed. The liability cannot be attributed merely on the basis of statements of interested witnesses i.e. Petitioner No. 1 It is plausible that the Petitioners might have asked for some money amidst pandemic out of some fiscal requirements or monetary stringency pertaining to domestic expenses since their son had lost his job but the Hon'ble Supreme Court in the case of ***Appasaheb & Anr. v. State of Maharashtra***[79] held that, "*Demand for money on account of some stringency or meeting some urgent domestic expense cannot be termed as demand for dowry*."

[3.2] THAT THE INGREDIENTS OF SECTION 498-A OF I.P.C. ARE NOT SATISFIED

It is most humbly submitted that Sec. 498A of the I.P.C. is worded as,

> "*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 purposes of this section, "cruelty" means-*
>
> *(a) any wilful conduct which is of such 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.*"

It is well settled that for attributing criminal liability under Sec. 498 A certain pre-requisites are to be sufficed: *firstly*, there shall be such conduct which inflicts cruelty on the woman or

[78] Appasaheb & Anr. v. State of Maharashtra, AIR 2007 SC 763.
[79] *Id.*

harassment of the woman; *secondly*, the conduct shall be wilful and voluntary; and *thirdly*, the cruelty shall be such as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health & the harassment should be such so as to coerce the woman or any of her relative to meet any unlawful demand.[80]

It is further submitted that the Hon'ble Supreme Court in the case of ***Pawan Kumar v. State of Haryana***[81] held that cruelty or harassment under Sec. 498A need not to be physical, and mental torture in a grave case would be sufficient for conviction. In the case of ***Ghusabhai Raisangbhai Chorasiya & Ors. v. State of Gujarat***[82] the Hon'ble Supreme Court held that when there is no evidence that mental cruelty was of such degree that it would drive the deceased wife to commit, the criminal liability under Sec. 498A cannot be attributed to the accused and that conviction under Sec. 498A on the basis of the said allegations alone is not proper. Further, in the case of ***Akula Ravinder v. State***[83] the Hon'ble Supreme Court ruled that to bring an accused within the ambit of Sec. 498A, it must be proved that the woman was subjected to only such cruelty as has been provided under this section and cruelty of no other kind. In the instant case no substantial evidence has been produced before the Court to establish cruelty or harassment. The conviction under Sec. 498-A cannot be called for merely on the basis of statement of the interested witnesses i.e. Petitioner No. 1. It is well settled that where there was evidence of only a slight harassment of the deceased by her in-laws as a result of which she committed suicide, this by itself is not enough to convict the husband and in-laws.[84]

In the case of ***Jagdish Chander v. State***[85] it was held by the Hon'ble Court that drinking habits of the husband and his coming home late at night does not amount to "*cruelty*" unless it is accompanied by beating and demanding dowry[86]. Further, in ***Gangula Mohan Reddy v. State of Andhra Pradesh***[87] the Hon'ble Supreme Court reiterated its decision in ***State of West Bengal v. Orilal Jaiswal & Ors.*** wherein the Court held that,

> "*the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact*

[80] The Indian Penal Code, 1860, § 498A, No. 45 of 1860, Acts of Parliament (India).
[81] Pawan Kumar v. State of Haryana, AIR 1998 SC 958.
[82] Ghusabhai Raisangbhai Chorasiya v. State of Gujarat, Criminal Appeal (SC) No. 262 of 2009.
[83] Akula Ravinder v. State, AIR 1991 SC 1142.
[84] Mohan Lal v. State, (1984) 1 Chand. LR 647 (P and H); Ashok Kumar v. State, 1987 Cr LJ 1412 (P&H).
[85] Jagdish Chander v. State, 1988 Cr LJ 1048 (P&H).
[86] P.B. Bikshapathi v. State, 1989 Cr LJ 1186 (A.P.).
[87] Gangula Andhra Pradesh v. State of Andhra Pradesh, (2010) 1 SCC 750.

> *induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, disorder and differences in domestic life quite common to the society to which the victim belonged and such petulance, disorder and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide…*"

Thus, "*cruelty*" shall be differentiated from "*ordinary petulance, discord and difference in domestic life*".[88] There is a very thin line of demarcation between "*ordinary petulance*" and "*cruelty*" and confusing between the two is not unlikely. Also, how a person interprets the conduct of another person is also a dynamic question. Thus, it is plausible that Noor might have confused the two owing to her personal beliefs and thoughts.

[3.3] THAT THE INGREDIENTS OF SECTION 304-B OF I.P.C. ARE NOT SATISFIED

It is most humbly submitted that Sec. 304-B of the I.P.C. *inter alia* states that,

> "*Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*"

It is explicit from the aforesaid provision that attributing the criminal liability of causing "*dowry death*" certain pre-requisites are to be satisfied: *firstly*, there shall be "*demand of dowry*" **[3.3.1]**; *secondly*, the cruelty or harassment shall be for or in connection with such demand for dowry**[3.3.2]**; *thirdly*, the death shall be caused owing to bodily injury, cruelty or harassment the deceased was subjected to '*soon before death*'**[3.3.3]**; *fourthly*, that such death shall occur within seven years of marriage[89]; *fifthly*, there shall be perceptible nexus between the death of the deceased & harassment or cruelty on her[90]**[3.3.4]**; and *lastly*, the

[88] Mahavir *Supra* note 27, ¶ 39.
[89] Sunil Bajaj v. State of M.P., (2001) 9 SC 417; Mahavir Kumar v. State of Delhi, Criminal Appeal (Delhi High Court) 611/1999, ¶ 15; PROFESSOR T. BHATTACHARYYA, THE INDIAN PENAL CODE 533 (Central Law Agency, 2017)
[90] Satvir Singh v. State of Punjab, 2001 Cr LJ 4625 (SC).

commission of the offence shall be proven beyond reasonable doubt on the basis of evidence, direct or circumstantial or both **[3.3.5]**.[91]

Furthermore, Sec. 113B of the Indian Evidence Act, 1872 provides that a presumption of '*dowry death*' may be made if it is "*shown*" the aforementioned pre-requisites are met and the possibility of natural or accidental death is ruled out so as to bring it within the purview of the "*death occurring otherwise than in natural circumstances*".[92] This shifts the *onus probandi* on the accused to defend the allegations. It is also well established that "*suicide*" is an unnatural death and is within the purview of the aforesaid clause.[93]

[3.3.1] *That Petitioner No. 2 and his family members never raised the demand for dowry from Noor or Petitioner No. 1*

It is further submitted that from the evidence placed on record it is *ex facie* that there was no demand for dowry from Noor as is also contended in **[3.1]** since not every demand for money is dowry it is probable that the demand might be in relation to some domestic fiscal stringency.

[3.3.2] *That Noor was not subjected to cruelty or harassment by her in-laws for dowry "soon before death"*

It is further submitted that from the evidence placed on record it is *ex facie* that Noor was not subjected to cruelty or harassment for or in connection with demand of dowry as is also contended in **[3.2]** Furthermore, while interpreting the expression "*soon before*" in the aforesaid provision the Hon'ble Delhi High Court in ***Sunil Bansal v. State of Delhi***[94] held that,

> "*Though there is no thumb rule as to what is meant by the expression "soon before" death of a woman u/s 304B IPC despite substantial flexibility, the charge cannot be maintained, if the acts are remote in point of time*."

The Hon'ble Supreme Court further in the case of ***Yashoda v. State of Madhya Pradesh***[95] remarked that there should not be too much time lag between cruelty and harassment in connection with demand of dowry and the death in question. It was also held that there

[91] Mahavir Kumar v. State of Delhi, Criminal Appeal (Delhi High Court) 611/1999, ¶ 16; M. Srinivasulu v. State of Andhra Pradesh, (2007) 12 SCC 443, ¶ 8.4; Wazir Chand v. State, AIR 1989 SC 378.
[92] Mahavir *Supra* note 27, ¶ 27.
[93] Raja Lal Singh v. State of Jharkhand, 2007 Cr. LJ 3262 (SC).
[94] Sunil Bansal v. State of Delhi, 2007 (7) AD Delhi 780.
[95] Yashoda v. State of Madhya Pradesh, 2004 (3) SCC 98.

should be a "*proximate and live link*[96]" between the effect of cruelty based on dowry demands and death of the woman. The Court held that if the alleged incident of cruelty is remote in time and has become stale, not to disturb mental equilibrium of the woman, it would be of no consequence[97] but no straight jacket formula can be laid down as to what would constitute a period of "*soon before*" and it thus also depends on the circumstances of each case.[98] In the instant case no "*proximate and live link*" can be established since there was no demand for dowry was made from and no cruelty inflicted on Noor.

[3.3.3] *That the 'suicide note' is devoid of evidentiary value in absence of proven cruelty and demand of dowry*

It is further submitted that the evidentiary value of a dying declaration was discussed in the case of ***Ashabai & Ant. v. State of Maharashtra***[99] wherein the Supreme Court referred to Sec. 32 of the Indian Evidence Act, 1872 which states that when a dead person has left some declaration becomes relevant to the case when it is related to the cause of death of the deceased and is admissible as evidence. It further held that,

> "*When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of this dying declaration.*"

However it was also reiterated in the aforesaid case that the law does not insist upon the corroboration of dying declaration before it can be accepted and that the insistence of corroboration of a dying declaration is only a rule of prudence.[100]

It was argued in catena of case laws including, *inter alia*¸ ***Garza v. Delta Tau Delta Fraternity National***[101] that suicide notes are often considered as one-sided account of the incidents leading to such mental degradation of the deceased that he or she chooses to end their life which is written with the intention that the declaration is read after the demise of the deceased. Therefore, the declarant tries to fabricate the account of instances which forced him

[96] Hira Lal v. State of Delhi (Government of NCT), 2003 Cr. LJ 3711 (SC); State of Andhra Pradesh v. Raj Gopal Asawa, 2004 Cr. LJ 1791 (SC).
[97] Mahavir *Supra* note 27, ¶ 30.
[98] Kunhiabdulla v. State of Kerela, 2004 Cr. LJ 5005 (SC).
[99] Ashabai & Anr. v. State of Maharashtra, (2013) 2 SCC 224.
[100] Ashabai & Anr. v. State of Maharashtra, (2013) 2 SCC 224.
[101] Garza v. Delta Tau Delta Fraternity National, 916 SO 2D 185.

to commit suicide. The Hon'ble Court held the suicide note inadmissible in the case.[102] Similarly, in the instant case it is plausible that the deceased daughter of Petitioner No. 1 had also fabricated the instances in order to seek revenge for taking her life and in such a mental state which induces the person to commit suicide. Thus, the suicide note cannot be considered as a reliable and substantial proof until or unless some other direct evidences are produced to corroborate the commission of the alleged offences.

[3.3.4] *That there is no perceptible nexus between the death of the deceased and the alleged cruelty or harassment she was subjected to*

It is further submitted that in the case of ***Bhupendra v. State of Madhya Pradesh***[103] the Hon'ble Supreme Court held that Sec. 306 and Sec. 304B are not mutually exclusive and that Sec. 306 takes within its fold one aspect of Sec. 304B. Therefore for establishing a "*perceptible nexus*" between the death of the deceased and the alleged cruelty or harassment she was susceptible to, it becomes decisive that all the essentials of Sec. 306 are to be satisfied beyond reasonable doubt before attributing the criminal liability under Sec. 304B.

In the case of ***Nachhatar Singh v. State of Punjab***[104] the Court held that in a case where abetment of suicide is in question on account of cruelty, the cruelty meted out must of such nature as would drive a person of common prudence to commit suicide. Also, in the case of ***P. Sreenivasulu v. State of Andhra Pradesh***[105] it was held that uttering of abuses will not amount to provocation to commit suicide and it does not constitute abetment and so no offence is made out under Sec. 306. Moreover, in the case of ***M. Mohan v. State***[106] it was held that if the deceased wife was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in a joint family and where the allegations against the accused are not even remotely connected to the offence than the proceedings against the accused are liable to be quashed. It is *ex facie* from the arguments averted in **[3.3.1]**, **[3.3.2]** and **[3.3.3]** that Petitioner No. 2 has neither inflicted any sort of cruelty on Noor soon before her death nor had made any demand for dowry. Thus it can be inferred that Petitioner No. 2 neither intended to nor abetted suicide of Noor and there is no '*perceptible nexus*' between the death of the deceased and the alleged cruelty.

[102] *Id.*
[103] Bhuprendra v. State of Madhya Pradesh, 2014 Cr LJ 546 (SC).
[104] Nachhatar Singh v. State of Punjab, 2011 Cr LJ 2292 (SC).
[105] P. Sreenivasulu v. State of Andhra Pradesh, 2004 Cr LJ 2718 (AP).
[106] M. Mohan v. State, 2011 Cr LJ 1900 (SC).

[3.3.5] *That the Petitioner No. 2 is entitled to 'benefit of doubt' in absence of sufficient evidence and independent witnesses*

It is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt. Even if there may be an element of truth against the accused but considered as a whole there is invariably a long distance to travel and whole of distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.[107]

In the case of ***Baljinder Kaur v. State of Punjab***[108] the Hon'ble Supreme Court held that in case of lack of evidence persistent to dowry demand or cruelty for or in connection with dowry the offence under Sec. 304B cannot be made out.

In the case of ***Harjit Singh v. State of Punjab***[109] the wife died of poisoning within seven years of marriage. There was no substantial evidence to show that she was subjected to cruelty or harassment by the appellate husband or his relatives for or in connection with any demand of dowry. The Hon'ble Supreme Court held that presumption arising under Sec. 304B of I.P.C. or Sec. 113B of Evidence Act, 1872 could not be invoked against appellants. Further, in the absence of evidence showing that the deceased was subjected to any cruelty within the meaning of Sec. 498A of I.P.C., the appellant accused cannot be convicted under Sec. 306 merely because he was not found guilty under Sec. 304B. Similar view was expressed in the case of ***Sharadbhai Jivanlal Vaniya v. State of Gujarat***[110] it was held that in absence of sufficient evidence, the conviction is *ultra vires* the Code. In the case of ***Durga Prasad v. State of Madhya Pradesh***[111] it was held that since the prosecution was not able to establish that the deceased had been subjected to cruelty or harassment soon before her death in connection with any demands for dowry thus he deserves to be acquitted.

In the instant case also there is no independent witness and there is no direct evidence to establish beyond doubt that Petitioner No. 2 either aided or instigated Noor to commit suicide or entered into conspiracy to aid her in committing suicide. Neither the element of *mens rea* has been successfully proven by the opposing counsels. The Counsel for Petitioner No. 1 has

[107] Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637; Anil W. Singh v. State of Bihar, (2003) 9 SCC 67; Reddy Sampath W. v. State of Andhra Pradesh, (2005) 7 SCC 603; Ramreddy & Rajesh Khanna Reddy v. State of Andhra Pradesh, (2006) 10 SCC 172; Sher Singh alias Partapa v. State of Haryana, 2015 Cr LJ 1118 (SC).
[108] Baljinder Kaur v. State of Punjab, 2015 Cr LJ 758 (SC).
[109] Harjit Singh v. State of Punjab, 2007 Cr LJ 1435 (SC).
[110] Sharadbhai Jivanlal Vaniya v. State of Gujarat, 2012 Cr LJ 1575 (SC).
[111] Durga Prasad v. State of Madhya Pradesh, (2010) 9 SCC 73.

failed to establish complete and conclusive chain of circumstances to prove guilt of the accused persons beyond reasonable doubt. It is therefore humbly contended that the Petitioner No. 2 is entitled to "*benefit of doubt*".

[4.] THAT THE INGREDIENTS OF SECTION 306 AND OTHER SECTIONS ARE NOT SATISFIED IN THE F.I.R. REGISTERED AS CASE CRIME NUMBER 2417/2020

The counsel for Petitioner No. 1 most humbly submits that: *firstly*, the ingredients of Sec. 323 of I.P.C. are not satisfied in the F.I.R. No. 2417/2020 **[4.1]**; *secondly*, the ingredients of Sec. 504 of I.P.C. are not satisfied in the said F.I.R. **[4.2]**; and *lastly*, the ingredients of Sec. 306 of I.P.C. are not satisfied in the F.I.R. **[4.3]**. It is therefore humbly contended that the F.I.R. against Petitioner No. 1 is liable to be quashed.

[4.1] THAT THE INGREDIENTS OF SECTION 323 OF I.P.C. ARE NOT SATISFIED

It is most humbly submitted that Sec. 321 of the I.P.C. defines the act of "*Voluntarily causing hurt*" as,

> "*Whosoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt"*."

Further, Sec. 319 of the Code defines "*hurt*" as "*bodily pain, disease or infirmity*" inflicted by one person on another intentionally. It is explicit from the aforesaid provisions that for attributing criminal liability under Sec. 323 certain essentials are to be sufficed: *firstly*, the accused must have intentionally committed such act **[4.1.1]**; and *secondly*, the act must cause hurt or shall be such as is likely to cause hurt to any person **[4.1.2]**.

[4.1.1] *That Petitioner No. 1 had no intention to cause 'hurt' to Ajay*

It is most humbly submitted that Petitioner No. 1 had no intention to hurt Ajay since he was Petitioner's Son-in-law. Although there were conflicts between the families of Petitioner No. 1 and Petitioner No. 2 but there has been no significant instance quoted by the opposing counsels to establish *mens rea* on part of Petitioner No. 1. It is *ex facie* that where the person himself is taking care of Petitioner's daughter then why would the petitioner intend to hurt such person. Since, the opposing counsels are unable to establish *mens rea* thus it can be contended that Petitioner No. 1 has not intended to hurt Ajay in any manner.

[4.1.2] *That Petitioner No. 1 had not caused any 'hurt' to Ajay*

It is most humbly submitted that '*et actus non facit reum nisi mens sit rea*' which means that a guilty act together with a guilty mind constitute a crime. To constitute an *actus reus* mere participation is enough but neither Petitioner No. 1 has done such act or conduct which directly affected the mental state of deceased Ajay and that too with such gravity so as to instigate him to commit suicide. It is further contended in **[4.3]** that the Petitioner No. 1 has not abetted the commission of suicide of Ajay. It is therefore contended that the Petitioner No. 1 must not be attributed with the criminal liability under Sec. 323.

[4.2] THAT THE INGREDIENTS OF SECTION 504 OF I.P.C. ARE NOT SATISFIED

It is most humbly submitted that Sec. 504 of the I.P.C. explicitly states that,

> "*Whosoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.*"

It is explicit from the aforesaid provisions that before attributing criminal liability under Sec. 504 certain pre-requisites are to be satisfied: *firstly*, there must be intentional insult of a person **[4.2.1]**; *secondly*, the insult must be such as is 'likely' to provoke the person to commit an act or omission **[4.2.2]**; and *thirdly*, such provocation shall be such so as to cause breach of public peace or "*any other offence*" **[4.2.3]**.[112]

[4.2.1] *That Petitioner No. 1 neither insulted Ajay nor had any intention to insult Ajay*

It is most humbly submitted that the word '*insult*' means treating a person with offensive disrespect or offer indignity and that such insult may be caused by spoken or written words, that is to say, it may be in the form of speech or writing.[113] It is also well settled that making a complaint is not insult unless it is maliciously motivated with the intention to insult and is based on frivolous grounds since it is merely considered as recourse of legal remedy advised by the legal consultant.[114] No sufficient ground is present to establish that any conduct of the accused Petitioner instigated Ajay to commit suicide.

[4.2.2] *That Petitioner No. 1 did not provoke Ajay to commit suicide*

[112] Gopal v. State, 1952 Mad. WN 236.
[113] Prem Pal Singh v. Mohan, 1981 Cr LJ 1208 (HP).
[114] Atul Kumar v. State of NCT Delhi, 2021 SCC OnLine Del 4107; Fiona Shrikhande v. State of Maharashtra & Anr., Criminal Appeal (SC) No. 1231 of 2013.

It is most humbly submitted that *mere* insult is not punishable under the aforesaid provision it must also be proven that the insult was such so as to induce Ajay to commit suicide. Since it is already established that Petitioner No. 1 has not insulted Ajay thus no question of provocation arises.

[4.2.3] *That commission of suicide falls outside the purview of Section 504 of I.P.C*

It is most humbly submitted that although commission of suicide is punishable under Sec. 309 of I.P.C. but it is not an offence since 2017 inasmuch as under Section 115 of the Mental Health Act, 2017 this *per se* excludes suicide from the purview of Sec. 504 and consequently, relives the accused Petitioner No. 1 from criminal liability under Sec. 504.

[4.3] THAT THE INGREDIENTS OF SECTION 306 OF I.P.C. ARE NOT SATISFIED

It is most humbly submitted that Sec. 306 of I.P.C. explicitly states that,

"*If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine*."

It is humbly submitted that before attributing criminal liability under Sec. 306 certain per-requisites are to be satisfied: *firstly*, there shall be abetment; *secondly*, the accused must be intending to aid or abet the deceased to commit suicide and *lastly*, there shall be evidence suggesting that the accused intended by such act to instigate the deceased to commit suicide.[115] Furthermore, the Hon'ble Supreme Court in the case of ***Gurcharan Singh v. State of Punjab***[116] while reiterating the exposition of law relating to the offence of abetment observed that:[117]

> "*21. It is manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the*

[115] M. Arjunan v. State, (2019) 3 SCC 315.
[116] Gurcharan v. State of Punjab, (2017) 1 SCC 433.
[117] *Id.*

> *intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are of the concomitant indices of abetment. Section 306 IPC, thus criminalizes the sustained incitement for suicide*."

In the case of ***Sanju v. State of Madhya Pradesh***[118] the dying declaration by deceased showed that he was in great stress and depression. It was also placed on record that he was a frustrated man and in the habit of drinking. It was held that since the suicide was not the direct result of the *actus reus* thus the charge sheet filed against the accused was liable to be quashed as the essential ingredients of abetment were totally absent.

In the case of ***Atul Kumar v. State of NCT Delhi***[119] it was held that filling of complaint cannot be held as abetment of suicide. In the instant case Ajay committed suicide subsequent to filling of F.I.R. by Petitioner No. 1 but the conduct of the accused Petitioner was not *malafide* but was done with the intention to recourse the legal remedy available.

[118] Sanju v. State of Madhya Pradesh, 2002 Cr LJ 2796 (SC).
[119] Atul Kumar v. State of NCT Delhi, 2021 SCC OnLine Del 4107.

PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, this Hon'ble Court may graciously be pleased to adjudge and declare that:

1. That the Hon'ble High Court has jurisdiction to entertain the writ petitions.
2. That there exist valid legal grounds for quashing the F.I.R. Registered against Petitioner No. 2 as Case Crime No. 2412/2020.
3. That there exist valid legal grounds for quashing the F.I.R. Registered against Petitioner No. 1 as Case Crime No. 2417/2020.
4. That the ingredients of Section 304-B and other section are not satisfied in F.I.R. Registered as Case Crime No. 2412/2020.
5. That the ingredients of Section 306 and other section are not satisfied in F.I.R. Registered as Case Crime No. 2417/2020.

And to issue

1. Appropriate writ, orders or directions to the Respondent No. 1 to quash the F.I.R. Registered against Petitioner No. 2 as Case Crime No. 2412/2020.
2. Appropriate writ, orders or directions to the Respondent No. 1 to quash the F.I.R. Registered against Petitioner No. 1 as Case Crime No. 2417/2020.

And pass any other order or relief in favour of the Petitioner in the large interest of justice.

All of which is respectfully submitted

Sd/-

Counsels on behalf of Petitioners