From,

Registrar General,
High Court of Uttarakhand,
Nainital.

To,

All the District & Sessions Judges,
State of Uttarakhand.

No. 6577 /U.H.C./Admn.B/v-a-2026 Dated: 14.10.2026

Subject:- Compliance of Hon'ble Supreme Court directions.

Sir,

Kindly find enclosed herewith a copy of judgment dated 24.09.2026 passed by Hon'ble Supreme Court of India in Civil Appeal No. 13119 of 2026 titled as *"R vs. E and Anr."*, for information and circulation amongst all the Judicial Officers and Criminal Courts for compliance of directions mentioned at para Nos. 47-77 of the aforesaid judgment.

With Profound Regards,

Yours sincerely,

14.10.2026

(Dhirendra Bhatt)
Registrar (Judicial)
"For Registrar General"

Encl: as above.

Seen, Circulate amongst all the Judicial Officer for compliance.

14.10.2026

District & Session Judge
Pauri Garhwal

2026 INSC 1049

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13119 OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 1092/2024)

'R' .....Appellant(s)

Versus

'E' & Anr. ..... Respondent(s)

WITH

CRIMINAL APPEAL NO. 4534 OF 2026
(@ SPECIAL LEAVE PETITION (Crl.) NO. 7710/2024)

CRIMINAL APPEAL NO. 4533 OF 2026
(@ SPECIAL LEAVE PETITION (Crl.) NO. 7711/2024)

CONTEMPT PETITION (CIVIL) NO. 208/2024

IN

CIVIL APPEAL NO. 13119 OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 1092/2024)

AND

CRIMINAL APPEAL NOS. 4535-4536 OF 2026
(@ SPECIAL LEAVE PETITION (Crl.) NOS. 10197-10198/2024)

J U D G M E N T

K. V. Viswanathan, J.

1) To be caught in the crossfire between warring parents would undoubtedly be a painful experience for any child. When the acrimony, however, is escalated to the level of unjustifiably attributing sexual assault of the child by one parent, the matter acquires a different dimension altogether. Quite apart from the trauma that the minor child is put through in the process, the accusation can damage the very fabric of the parent-child relationship and the resultant wound is bound to leave an indelible scar in the minds of both. This is independent of the hurt, humiliation and the public opprobrium the accused parent faces, even long after exoneration from the charges. What is alarming is that this tendency of making false accusations is on the rise. Instances are not infrequent where gullible parties are misguided by their advisors, including in some cases by recalcitrant legal professionals, who in their pursuit of the motto of "win at any cost", end up fuelling the fire. The only objective is to tie up

the accused spouse and their family members in knots with the foisted criminal case and ensure that they are kept busy with the Court process for a considerable period. Very often, the enraged parent who is engulfed by anger and blinded by ego falls prey to these machinations, oblivious to the consequences that may ensue. Some of the above attributes are present in this case. We have, in this judgment, endeavoured not just to find a solution to the case at hand but have also ventured to lay down certain safeguards, to check this growing menace.

2) Leave granted. Let the names of the parties in the cause title, except the first alphabet, be redacted.

BRIEF FACTS:-

3) The Husband, 'R' and Wife, 'E', who are the appellant and respondent in the Civil Appeal arising out of Special Leave Petition (C) No.1092 of 2024, got married in the year 2011. This was a second marriage for both of them. There were certain misunderstandings soon after the marriage; however, they

appeared to have been sorted out since a child 'M' was born in the year 2015.

4) Serious misunderstandings arose between the parties since 2017, and ultimately, on 02.04.2018, the Wife -'E' left the matrimonial home with the child 'M'. The wife-'E' has a case that she was driven out of the house, after being assaulted. A criminal case was indeed registered, which was closed.

5) On 24.04.2018, the Husband-'R' filed Guardianship Petition under Section 25 of the Guardians and Wards Act, 1890 in G & WC No. 128/2018 before the Court of Principal Judge, Family Court, Bengaluru. A First Information Report (for short 'the FIR'), bearing No. 165/2018, dated 05.06.2018, also came to be filed by the Husband-'R' against the Wife-'E' and one 'S' at Jayanagar Sub-Division, Bangalore City, Bangalore, under Sections 420, 497, 109, 504, 506, 418 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and Sections 75 and 87 of the Juvenile Justice (Care and

Protection of Children) Act, 2015, (hereinafter referred to as 'the JJ Act') wherein certain allegations were made.

6) Later, on 07.07.2018, the Husband-'R', filed a Petition under Section 13(1)(1-A) of the Hindu Marriage Act, 1955, before the Court of Ist Additional Principal Judge, Family Court, Bengaluru, bearing MC No. 3654/2018, seeking a decree of divorce on the ground of cruelty and adultery. Pending the Guardianship Petition, certain visitation arrangements were made.

7) On 03.03.2022, the IVth Additional Principal Judge, Family Court, Bengaluru, allowed the petition filed by the Husband-'R' and directed the Wife-'E' to handover the custody of the minor child 'M', then aged 7 years, to the custody of the Husband-'R', within one month. Further order was made, permanently restraining 'E' from removing the child from the jurisdiction of the Court till the child was handed over to Husband-'R'.

8) Being aggrieved, Wife -'E' filed MFA No. 2786 of 2022 before the High Court of Karnataka at Bengaluru. The High Court, vide order dated 31.01.2023, while dismissing the appeal, made certain visitation arrangements in the following terms:-

> "68. The appeal is dismissed. We feel that the interest of the minor child will be best served if the custody of the child is handed over to the respondent, but with sufficient access to the appellant to visit the minor at frequent intervals, and therefore, while confirming the judgment and decree dated 03.03.2022 passed by the Family Court in G & WC. No. 128/2018 filed by the respondent under Section 25 of the Act, and directing appellant to grant custody of the minor child to the respondent, we are inclined to grant visitation rights to the appellant though she has not prayed for the same, on the following terms:
>
> (i) The appellant is directed to hand over the minor child to the custody of the respondent after completion of the child's annual final examinations for the present academic year i.e., 2022-23.
>
> (ii) The respondent shall make arrangements for the child to continue her studies in her present school and shall shift his residence to a place which is within the radius of 5 kms. from the child's school.
>
> (iii) The respondent shall provide the school calendar of the child with list of holidays along with dates of examination to the appellant.
>
> (iv) The respondent shall meet all the expenses of the minor child towards her education, health, care, food and clothing and in the event the appellant also wishes to contribute towards the upbringing of the child, the respondent shall not create any obstruction to and/or prevent the appellant from also making such contribution.

(v) The appellant will be at liberty to visit the minor child either in the respondent's house or in the premises of a mutual friend or any other place as may be agreed upon on every Sunday. To enable the appellant to meet the child, the respondent shall ensure the child's presence either in his house or in the house of the mutual friend or in a public place agreed upon at 10.00 a.m. The appellant will be entitled to take the child out with her for the day, and to bring her back to the respondent's house or the premises of the mutual friend within 7:00 p.m. in the evening.

(vi) On all important festival days for which holiday is declared to the School, the appellant shall be entitled to take custody of the child between 10.00 a.m. and 1.00 p.m.

(vii) The appellant, upon prior intimation to the respondent, will also be entitled to meet the minor at her school once a week after school hours for about an hour.

(viii) The appellant will also be entitled to the custody of the minor for 10 consecutive days during the summer vacation on dates to be mutually settled between the parties.

(ix) During long holidays/vacations covering more than ten days, the child will be allowed to be in the company of the mother for half of the said long holidays/vacations.

(x) The mother is entitled to communicate with the child through phone/video call/skype etc., between 7.00 p.m. to 8:00 p.m. everyday.

xi) The aforesaid arrangement will continue for the present, but the parties will be at liberty to approach the Family Court, Bengaluru, for fresh directions should the same become necessary on account of changed circumstances."

9) Against the said judgment dated 31.01.2023, Wife -'E' preferred a Special Leave Petition (C) No. 4869/2023 before

this Court. On 17.03.2023, at her request, the special leave petition was adjourned to 24.03.2023. On 24.03.2023, when further adjournment was sought by Wife -'E'; this Court adjourned the matter to 29.03.2023 with a notice that the petition will be heard and disposed of on the next date of hearing.

10) In the meantime, on 25.03.2023, the Court of Ist Additional Principal Judge, Family Court, Bengaluru, allowed the petition for divorce filed by the Husband-'R' and dissolved the marriage between the parties.

11) Reverting back to the proceedings in the Special Leave Petition (C) No. 4869 of 2023 pertaining to the custody of child 'M', the matter was taken up by this Court on 29.03.2023. The Mother-'E' did not appear before the Court on 29.03.2023 though she was prosecuting the case in person. The Court dismissed the Special Leave Petition by the following order:-

> "1. On 7 March 2023, this Court, while taking note of the grievance of the petitioner, granted protection to her to operate till 15 March 2023 with liberty to approach the High Court.

2. On 17 March 2023, the hearing was adjourned to 24 March 2023.

3. On 24 March 2023, the petitioner circulated a letter in pursuance of which an adjournment was granted and the petitioner was placed on notice that the petition will be disposed of on the next date of listing.

4. Again the petitioner has persisted with filing another letter seeking an adjournment. In view of the previous order, an adjournment cannot be granted again.

5. We have gone through the impugned order of the High Court and see no infirmity in the findings. The High Court has upheld the order which was passed by the trial Judge.

6.The Special Leave Petition shall stand dismissed.

7.Pending applications, if any, stand disposed of.''

12) A Miscellaneous Application, being MA (Diary) No. 13822/2023 was filed by the Mother-'E' to recall the order dated 29.03.2023, was dismissed on 10.04.2023. A SLP (C) Diary No.19821/2023 filed by Child 'M', through her Mother 'E', was also dismissed.

13) On 11.04.2023, the Father-'R' filed a Writ Petition before the High Court being W.P.H.C. No. 30 of 2023, for a direction to 'E' to produce 'M'. Non-bailable warrants (NBWs) were issued by the High Court on 27.04.2023 against 'E'. A

challenge by Mother-'E' to the NBWs in this Court was dismissed on 16.05.2023 in Diary no. 19469/2023.

14) On 07.06.2023, the Division Bench of the High Court, allowed the W.P.H.C. No. 30 of 2023 filed by the Father-'R' and the directions were given to the Commissioner of Police, Bengaluru, to ensure that the concerned Station House Officer (SHO), hands over the custody of 'M' to 'R' within 24 hours of the receipt of the order of the High Court.

15) It is not in dispute that on 07.06.2023 itself, custody was indeed handed over to 'R', the father of the Child 'M'. Multiple proceedings including criminal proceedings were filed by 'E' against 'R' and the family members soon after the handing over. It was alleged that Father-'R' was committing violence against 'M'. It is not disputed that these proceedings are all, as on date, closed with the surviving criminal proceeding being the one arising out of FIR No.76/2024 with which we are concerned in Civil Appeal arising out of SLP (C) No. 1092/2024.

16) No doubt, as far as Mother-'E' is concerned, there is a criminal proceeding arising out of FIR No. 165 of 2018 dated 05.06.2018, which we have dealt with later in the judgment.

17) Thereafter, Mother-'E' filed a Contempt Petition being CCC No.586/2023, before the High Court for violation of directions given in MFA No. 2786/2022, vide judgment dated 31.03.2023. The High Court, vide order dated 14.12.2023, modified certain visitation arrangements in favour of the Mother 'E'-Respondent No. 1 herein in the following terms :-

> "We had a long interaction with the child in the Chambers. In this interaction, we found that the child is a sensitive child and is interested in extra-curriculum activities like sports, drawing and painting. We also found that there is scope for healthy bond between the child and the parents and for this healthy bond and natural growth of the child, there is need for some modification in the arrangement which is made, either under the terms arrived at between the parties or under the orders passed by the Courts. On enquiry made to the parents, it is informed that the child would have Christmas Vacation from 23.12.2023 to 01.01.2024. In view of the above, we deem it appropriate to pass the following order with certain modifications to the earlier arrangement:
>
> (i) The father shall bring the child to the mother's house on Friday i.e. on 15.12.2023 in the evening by 6.30 p.m. and the child shall stay with the mother for Saturday and till Sunday evening. The mother shall then allow the father to take the child back on Sunday evening at about 8.30 p.m and the child will be with the father till 22.12.2023.

(ii) As informed to us, the child will enjoy Christmas Vacation for 10 days. We direct that during the first half of the Christmas Vacation i.e. for the first 5 days, the child shall stay with the mother and the second half of the Christmas Vacation, the child is allowed to stay with the father. Thereafter also, the child will remain with the father till the next date of hearing.

(iii) As stated above the mother or the father, whoever will be in custody of the child shall permit the child to speak with other parent by phone call, video call, whatsapp call or whatever mode is available."

18) Against the said Order dated 14.12.2023, the Father filed the present Civil Appeal arising out of Special Leave Petition (C) being No 1092/2024. While the said petition was pending before this Court, an FIR dated 28.03.2024, came to be lodged by Mother-'E', bearing No. 76/2024 registered at Jayaprakash Nagar Police Station, Sub-Division -Jayanagar, District Bangalore City wherein startling allegations on Father-'R' and his family members for having committed offences punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') read with Section 75 of the JJ Act and Sections 323, 504 and 506 read with Section 34 of the IPC against 'M', were levelled. The gist of the allegations in the FIR was in the following terms:

"…On 24.03.2024, when the child came to the complainant's house, the child appeared very sad. When the complainant enquired with the child about this, the complainant's daughter did not say anything initially. The child told the complainant that she was feeling dizzy. The complainant immediately took the child to Manipal Hospital for treatment and brought her back home. However, since the child was still not lively, after some time, when the complainant again enquired with her daughter, the child hugged the complainant and started crying and was in great distress.

Observing all this, the complainant took the child to a child psychologist. After counselling the child, the doctor informed the complainant about the following: the child's grandfather, grandmother, and their aunt were scolding, beating and using abusive language against the child. The child's father was forcibly touching the child's private parts and also pressuring the child to touch his private parts, thereby subjecting the child to sexual harassment. Furthermore, the father had threatened the child that if she disclosed this matter to anyone, he would kill the complainant (mother).

Subsequently, on 10.02.2024, at approximately 11:30 AM, the father 'R' made the child sit in his car and sexually harassed the child. Later, on 24.02.2024, at approximately 10:30 PM at night, the father took the child outside in his car, stopped the car near a traffic signal, and forcibly made the child touch his private parts. When the child refused, he assaulted the child inside the car, as stated by the child to the doctors.

The complainant presented the child before the Child Welfare Committee and got the child's statement recorded in the presence of the committee's doctor, and has come late today to file the complaint. Therefore, the complainant requests that appropriate legal action be taken….."

19) The statements of the child 'M' were also recorded. The child was subjected to medical examination at KIMS Hospital & Research Centre, Bengaluru.

20) This Court, on 22.07.2024, on being informed about the FIR No. 76 of 2024, directed the investigation to be handed over to a Senior Woman Police Officer of the concerned Police Station, not below the rank of Assistant Commissioner of Police (ACP). Further, the directions were given that the child be examined by a Panel consisting of three Doctors of Bangalore Medical College & Research Institute.

21) The case was again taken up on 01.10.2024 and after interacting with the parties and the child, the criminal proceedings filed by both the parties were stayed and the child was permitted to reside with the Mother-'E' in Bengaluru. Thereafter, when the matter was taken up on 16.10.2025 in the Committee Room of this Court and after interaction with the child 'M', it was directed that for the

present, the child shall continue to stay with Mother-'E' and continued the stay, as ordered earlier.

22) This matter was heard over a period of time, namely, on 08.09.2025, 23.09.2025, 16.10.2025, 17.12.2025 and 29.01.2026. Thereafter, when the case was taken up on 07.04.2026, this Court directed that the investigation in FIR No. 76/2024, should be taken over by the Central Bureau of Investigation (CBI). The operative part of the said Order of this Court is as under:-

> "12. In such circumstances, we are of the view that we should direct the CBI to takeover the investigation from the investigating agency in-charge of the investigation as on date.
>
> 13. The CBI, for the purpose of effective and meaningful investigation shall constitute a Committee. The Committee should be headed by an officer not below the rank of DIG nominated by the Director, CBI. The second Member in the Committee should be a well renowned lady Psychologist. Insofar as other Members of the Committee are concerned, including lady doctor, etc., we leave it to the better discretion of the CBI.
>
> 14. We have thought fit to resort to this process keeping in mind the sensitivity of the entire issue.
>
> 15. The investigating agency in-charge of the investigation of the said FIR shall transfer all the papers of the investigation at the earliest to the CBI.

> 16. The CBI shall commence with the investigation after constituting the Committee at the earliest and file a status report before this Court.
>
> 17. If the CBI intends to file any first preliminary status report, it may do so.
>
> 18. The parties shall extend full cooperation in the investigation that the CBI shall undertake.
>
> 19. We make it clear that the CBI shall proceed with the investigation notwithstanding any orders passed by the High Court or this Court so far.
>
> 20. We further clarify that the CBI shall not take any coercive steps against both the parties, except that they shall cooperate in the investigation.''

23) The CBI gave the Final Report with its covering letter dated 13.07.2026, which we shall deal with in this judgment a little later. The matter was taken on 17.07.2026 when the CBI Report was submitted to us. On that day, judgment was reserved. We also directed parties to surrender their passports, including the passport of minor daughter, to the Registry of this Court within a period of five days. On 29.07.2026, the parties reported to us that the passports have been duly surrendered.

24) At the outset, we must place on record our deep appreciation for the remarkable efforts put in by the CBI in the

present matter. Pursuant to our order dated 07.04.2026, a Committee was constituted under the leadership of Shri K. Sivasubramani, DIG, CBI, Hyderabad, Shri Vinayak Varma, SP, CBI and Ms. Shipa D., SP, CBI, as part of the police officers' team. Further, the Committee inducted Dr. Lakshmi Sravanti Tanuku, Assistant Professor of the Department of Child and Adolescent Psychiatry, National Institute of Mental Health and Neurosciences, Bengaluru (NIMHANS) and Dr. Anamika Sahu, Assistant Professor of the Department of Clinical Psychology, NIMHANS. We place on record our appreciation to the Members of the Committee for the outstanding work done by them and for the detailed Report, with convincing reasons, that has been made available to us.

25) The Report is very logically structured and has 8 (Eight) Chapters with the following details:-

> "I. Background of the Case.
> II. Investigation by Jayaprakash Nagar Police Station, Bengaluru.
> III. Developments during CBI Investigation.
> IV. Findings During CBI Investigation.

V. Evidence Derived From Psychological/Psychiatric Evaluation.

VI. Determinations made by CBI.

VII. Conclusion.

VIII. Appendices.''

26) Dealing with the background of the case, the factual aspects which we have set out hereinabove, have been encapsulated. Thereafter, the investigation done by the Jayaprakash Nagar Police Station has been discussed. Dealing with the developments during the investigation by the CBI, first, the matrimonial litigation between 'R' and 'E' has been discussed. List of key witnesses examined and the summary of the examination have been made available to us. Similarly, the list of key documents collected have also been set out and wherever necessary the documents have been discussed and woven into the Report at appropriate places with great care and precision.

27) The medical examination carried out, along with the physiological examination of the victim, at the time when the

matter was in the hands of the Jayaprakash Nagar Police, have also been set out. The Doctors, who carried out the said examination have been examined. Other crucial witnesses like the Class Teacher, the Tuition Teacher, the School Counsellor, the housemaid, co-employees of 'R' and 'E', neighbours have also been examined and the statements have been set out. The CCTV footage procured from the house of Father-'R' during the time when 'M' was there between 07.06.2023 and 24.03.2024 (the CCTV footage of crucial dates) have been analysed, forensically examined and meticulously discussed in the Report. Observations on CCTV videos have been carefully set out. What is praiseworthy is the CCTV footage pertaining to the dates of the alleged sexual assault and the time as well as the timings immediately succeeding the alleged assault have been carefully analysed.

28) 'R' and 'E' have been examined, the family members have been examined; the allegations against Father-'R' and each other family members have been threadbare discussed

in the background of the events. The litigation history including the multiple complaints registered by both the parties have been referred to. The context of matrimonial discord has been appreciated.

29) The most important aspect of the Report is the psychological/psychiatric evaluation. While the main CBI Report summarizes evidence derived from the psychological/psychiatric evaluation, Appendix 7 to the CBI Report annexes the entire Report.

30) We have, apart from the summary of the integrated psychiatric and psychological evaluation report in child forensic context, which is available in the report of the CBI, also perused the full report minutely. The detailed report runs into 79 pages and threadbare the matter has been gone into. The main report is divided into following Sections:

Section 1: Background

Section 2: Purpose and scope of evaluation

Section 3: Forensic interview process and clinical observations

Section 4: Clinical Evaluation of the Child

Section 5: Review and analysis of collateral information

Section 6: Statement Credibility Analysis

Section 7: Trauma in the context of child sexual abuse

Section 8: Assessment of behavioural indicators consistent with grooming

Section 9: Evaluation of loyalty conflicts and family relational dynamics

Section 10: Integrated formulation

Section 11: Conclusions

At the end of the Report, the psychiatric and psychological evaluators have answered the SIT-Mandated questions put to them.

31) We shall revert back to the summary in the CBI report. The psychological/psychiatric evaluation has been analysed and divided into the following sub-headings, namely,

(a) Disclosure history of Victim;

(b) Witness statements;

(c) CCTV footages/Video Recordings;

(d) Independent psychiatric & psychological analysis of victim; and,

(e) Forensic interview of victim

Thereafter, findings of the psychiatric & psychological assessment have been set out. It has been found that no signs of anxiety/trauma consistent with the allegations were found in the victim. Under this head too, the Report has kept in mind the following:-

(a) Independent psychologist analysis or the psychological report.

(b) Perception of/attitude towards/relationship with mother;

(c) Perception of/attitude towards/relationship with father;

(d) Perception of/attitude towards/relationship with members of father's family;

(e) Cause/Origin of allegations;

(f) Inconsistencies observed during interactions with victim; and,

(g) Analysis of influence by any members of her family.

A conclusion has been recorded that factors like prolonged parental conflict, on-going custody litigation, repeated discussions of the allegations, multiple psychological

consultations and continued exposure to family narratives, may have influenced the child's perceptions and narratives.

32) Not stopping there, the CBI, in detail, discusses the legal provisions and the judgments of this Court; the inconsistencies in the statements have been analysed; the analysis of the CCTV footage with the analysis of the statements of the witnesses have been set out separately and the opinion of experts has been discussed.

33) Applying the legal principles, the following conclusion was arrived at:-

> "In conclusion, the investigation believes that the testimony of the victim does not appear reliable or trustworthy. The contradictory testimonies, the absence of independent corroborative proof, the CCTV footages that suggest a different series of events, as well as the psychiatric/psychological evaluation, are sufficient to raise doubt as to the reliability and trustworthiness of the allegations. While each individual aspect may be insufficient in itself to negate the allegations, but taken together in their entirety, the Committee finds that the allegations are not made out against the accused and the matter is not fit for prosecution."

34) Having elaborately considered the facts and minutely evaluated the exhaustive Report submitted by the CBI, we are

of the opinion that interest of justice requires that FIR No. 76/2024, re-numbered as CBI Case RC0352026S0003, as registered by the CBI, ACB, ought not to be proceeded with any further, as doing so would be a gross abuse of process. We are satisfied that on material, the proceedings have to be quashed forthwith. Hence, we quash FIR No. 76/2024, originally registered with Jayaprakash Nagar Police Station, Jayanagar Sub-Division, Bengaluru, re-numbered as CBI Case RC0352026S0003 for offences punishable under Section 10 of the POCSO Act, Section 75 of the JJ Act as well as Sections 323, 504, 506, and 34 of the IPC against Father-'R' and three other family members.

BEST INTEREST OF THE CHILD: -

35) It is not disputed that the custody battle that was started in 2018 resulted in Father-'R' succeeding right up to this Court. The present proceedings arose only on the registration of FIR being No. 76/2024 dated 28.03.2024. That aspect has been discussed hereinabove and we have concluded by quashing the said proceedings. We are fully convinced that keeping the

overall facts and circumstances, applying the long list of precedents on the welfare of the child principle, evolved by this Court from ***Rosy Jacob*** vs. ***Jacob A. Chakramakkal,*** (1973) 1 SCC 840 onwards, the welfare of 'M' will be best served if she is in the custody and guardianship of Father-'R'. In ***Rosy Jacob (supra)*** it was held as under:-

> "15.....The Court's power under Section 25 of the Guardians and Wards Act is also, in our opinion, to be governed primarily by the consideration of the welfare of the minors concerned. The discretion vested in the Court is, as is the case with all judicial discretions to be exercised judiciously in the background of all the relevant facts and circumstances. Each case has to be decided on its own facts and other cases can hardly serve as binding precedents, the facts of two cases in this respect being seldom—if ever—identical……"

36) We have also borne-in-mind the education, maintenance and other considerations including health of the child 'M'. We find no good ground to differ from the final order passed by the Guardianship Court which has been sustained right up to this Court. If at all, the findings of the Inquiry Report of the CBI, have only reinforced the fact that the interest of the child

would be best subserved if she is in the custody and guardianship of Father-'R'.

JUDICIAL NOTICE OF ABUSE OF LEGAL PROVISIONS: -

37) We opened the judgment observing an alarming trend that is on the rise where one parent misuses the legal provisions to gain strategic legal advantage. This Court and some High Courts have already taken judicial notice of this unfortunate but a chronic syndrome.

38) In ***Geddam Jhansi and Anr.*** vs. ***State of Telangana and Ors.,*** 2025 SCC OnLine SC 263, highlighting the propensity of parties to exaggerate allegations in matrimonial disputes, this Court, speaking through N. Kotiswar Singh J., observed as under: -

> "31. Invoking criminal process is a serious matter with penal consequences involving coercive measures, which can be permitted only when specific act(s) which constitute offences punishable under the Penal Code or any other penal statute are alleged or attributed to the accused and a prima facie case is made out. It applies with equal force when criminal laws are invoked in domestic disputes. **Criminalising domestic disputes without specific allegations and credible materials to support the same may have disastrous consequences for the institution of family, which is built on the premise of**

> **love, affection, cordiality and mutual trust.** Institution of family constitutes the core of human society. Domestic relationships, such as those between family members, are guided by deeply ingrained social values and cultural expectations. These relationships are often viewed as sacred, demanding a higher level of respect, commitment, and emotional investment compared to other social or professional associations. For the aforesaid reason, preservation of family relationship has always been emphasised upon. Thus, when family relationships are sought to be brought within the ambit of criminal proceedings rupturing the family bond, courts should be circumspect and judicious, and should allow invocation of criminal process only when there are specific allegations with supporting materials which clearly constitute criminal offences.
>
> 32. We have to keep in mind that in the context of matrimonial disputes, emotions run high, and as such in the complaints filed alleging harassment or domestic violence, there may be a tendency to implicate other members of the family who do not come to the rescue of the complainant or remain mute spectators to any alleged incident of harassment, which in our view cannot by itself constitute a criminal act without there being specific acts attributed to them. Further, when tempers run high and relationships turn bitter, there is also a propensity to exaggerate the allegations, which does not necessarily mean that such domestic disputes should be given the colour of criminality." (Emphasis supplied)

39) In ***Achin Gupta*** vs. ***State of Haryana & Anr.***, (2025) 3 SCC 756, highlighting how in matrimonial disputes the main sufferers are the children, this Court, speaking through one of us (J.B. Pardiwala J.) held as under: -

> **"32. .....In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned.** The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. **However, the police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends....."** (Emphasis supplied)

40) In ***Ishwar Chand Sharma and Ors.*** vs. ***State of Uttar Pradesh and Anr.,*** 2026 SCC OnLine SC 1004, directly addressing the issue as to how the POCSO Act is used as a weapon to wreak vengeance and advised the legal fraternity to refrain parties from filing frivolous complaints, this Court, speaking through B. V. Nagarathna J., held as under: -

> **"9. In the backdrop of the facts of the present case, we wish to underline a worrying trend that has come to**

our attention. Parties involved in matrimonial or commercial relationships with one another are resorting to filing of frivolous and vexatious claims and allegations of a criminal nature to settle personal scores and grudges against each other and therefore turn to nefarious/oblique means to attain the said objective. We also painfully take judicial cognizance of the fact that the courts of law are being misused and overburdened by such vague and vexatious litigations between spouses as many a times, the recourse to law and police is taken, in an oblique way so as to antagonise, pressurise, hound and harass the other spouse and their family members in order to retaliate and exact revenge that is carried out due to sheer hatred and disdain for the said spouse and their family members.

9.1 While we are cognizant of the fact that there are genuine and bona fide cases in the courts wherein the aggrieved parties are genuinely looking for relief and respite from the actions and omissions of their spouses, that often require **immediate care and attention of the courts of law and public authorities, such cases get frequently overshadowed and obscured by the overwhelming number of false and frivolous cases filed by spouses against one another as an 'arm twisting' method so as to reach a more favourable outcome or settlement or more lucrative monetary settlement. The onus is on courts to be careful and cautious so as to separate the wheat from the chaff and separate the genuine cases of matrimonial oppression, rape and offences against women from the cases wherein the legal process and procedure is being used as a tool to file false and frivolous cases out of vengeance. While doing so, care should be taken to ensure that the rights and freedoms of innocent parties are not trampled or arbitrarily taken away by unscrupulous and baseless litigation.**

9.2 We are conscious of the fact that there are many instances where women are gravely affected by matrimonial disputes and violence that they have to endure at the hands of the spouse and in laws and other

family members. Such cases deserve our utmost attention and judicial scrutiny so as to make sure that the ends of justice are met and the offenders do not go scot-free and rather get the punishment they deserve**. However such a zeal to meet the ends of justice should be countenanced, by courts of law and executive authorities of the State, with a pragmatic approach bearing in mind the recent trend of criminal litigation in this country wherein the legal machinery and statutes are being used as a tool by mischievous litigants so as to create unnecessary hurdles and punish unsuspecting and often innocent citizens particularly in the sphere of matrimonial disputes. The litigating parties and their advocates should also be cognizant of the fact that such vexatious filing of false and frivolous claims and cases cast unnecessary burden on the already overburdened machinery and apparatus of the State and Judiciary. This factor also diverts the attention of courts and its resources whereas genuine cases of the parties with actual verifiable grievances are not being able to be adjudicated in time owing to the time spent in adjudicating upon phantom claims of mischievous litigators seeking to create litigation out of thin air or in the absence of a cause to do so.**

9.3 One particular offshoot or a species of vexatious and frivolous litigation is in family disputes, particularly, a 'matrimonial bouquet' that is presented by the estranged wife against the husband and his family out of personal animosity and spite once the relationship turns sour and rancorous and vice versa. This 'matrimonial bouquet' often includes claims of dowry demands; cruelty under 498A IPC; harassment by in laws and domestic violence, made by the complainant against her spouse and in-laws. This set of cases frequently include bogus and empty allegations and false claims of harassment, cruelty and marital hardships that, more often than not, contain little to no substance at all and are usually not backed by any material or other documentary evidence. A tell-tale sign of such vexatious cases is that often they contain vague and sweeping general allegations that are not specific in

nature but rather are aimed at arraying several family members if not all of the spouse's family, including those who are old and ailing, as accused and consequently cast the prosecution net as wide as possible by invoking multiple provisions of law by using general, vague and omnibus allegations that are not backed either by fact or law. We say so while being mindful of the fact that although any complaint or a FIR is not an encyclopaedia of evidence and factual circumstances so as to contain all details of the alleged incident, by no means can it be a general conglomeration of statements made by the disgruntled spouse with a mala fide intent, containing little or no details of the alleged criminal acts that often lack a chronology of events. Further, sweeping allegations and vexatious claims often fail to highlight and elaborate upon how the alleged acts happened, the manner in which such acts were undertaken, the aftermath of such incidents etc.

9.4 In this regard, we would be remiss to not highlight the recent upswing in the false and frivolous matrimonial cases which have unfortunately brought to the fore the uglier side of litigation. **A recent trend in this regard is when the wife resorts to filing false complaints and cases under POCSO Act alleging that the husband, who is also the father of the minor child, has committed wanton acts which are sexual in nature especially against the minor daughter. At the centre of this sort of litigation is a child who is often used by her mother against her father, against her will and wishes, so as to make false and vexatious complaints against her father and other male members of her paternal family in order to exact revenge or as an arm-twisting tactic to obtain a higher monetary settlement or to simply harass.**

9.5 **There are also instances where in cases of enmity between the members of a family, between neighbours or business partners or associates, or even between borrowers and lenders of financial assistance, a weapon of harassment being resorted to is a complaint under the POCSO Act at the instance of a parent of a child (in most cases being the daughter)**

so as to wreak vengeance or to get over civil disputes between the parties by a subdued accused under the said Act yielding to the demands of the complainant. Also, the threat of a false complaint under the POCSO Act is used as a means to escape legal consequences arising out of a commercial transaction, a matrimonial dispute or such other disputes.

9.6 While we are conscious of the fact that there are instances and a plethora of cases that are true and deserve the utmost attention and deft handling on the side of authorities and Courts and which should be pursued vigorously to reach a logical conclusion, on the other side of the spectrum, are cases invoking such serious and heinous allegations which are prima facie vague, omnibus and general in nature and thereby lacking any material backing or evidence which should be shunned at the very threshold. We say so for the reason that if a person is made an accused and forced to face a criminal trial on general and sweeping allegations without bringing on record any specific instances of criminal conduct, it would tantamount to an abuse of the process of law and court. Hence, legal practitioners who tender advice in such cases must restrain parties from filing such false/frivolous complaints when requested to do so. **Further, lawyers/advocates must also not advise filing of criminal complaints which are false/concocted so as to keep the opposite parties under a tight leash so that they could come forward for a settlement on the terms dictated by their parties or else, to face a criminal prosecution which can prolong for years.** When such is the trend, on the other side, efforts are made to seek anticipatory bail by persons apprehending arrest owing to a false/frivolous complaint being lodged which sometimes reach the portals of this Court after being unsuccessful at the level of the trial court and High Court. Also, steps are taken for seeking quashing of such false/frivolous complaints before the High Court which has its own saga of uncertainties causing undue pressure, harassment, stress and tension on the so-called accused. The consequence of all this is docket explosion and burden on Courts resulting in genuine complaints and

cases not being given due time and attention that they need.

9.7 Courts then owe a duty to subject the allegations levelled in the complaint to a thorough scrutiny to ascertain if a prima facie case is made out or not, and whether there is any kernel of truth in the allegations or whether the said allegations have been made only with the sole intent of spite so as to harass the opposite party with a prolonged process of criminal litigation, arrest and sometimes a conviction which later on may result in an acquittal by a higher Court or in a worse case, no relief at all being given to an innocent party. This stands more true when prosecution arises from a matrimonial dispute.

9.8 We are also cognisant of the fact that a genre of matrimonial litigation is on the rise in this country which inevitably includes, within its ambit, a rise in filing of false, frivolous and vexatious cases with a mala fide intent and ulterior motive to wreck havoc and vengeance on the spouse and in the bargain seek the best compromise. Therefore, the Courts have to exercise utmost caution and restraint while entertaining such suits and criminal proceedings as any misstep and overreach can have a cascading effect on the health, both mental and physical, of the parties involved and the sanctity of the institution of marriage itself....." (Emphasis supplied)

41) The High Courts, across the country, have also been cognizant of this malaise. The Kerala High Court, in ***Suhara*** vs. ***Muhammed Jaleel,*** 2019 SCC OnLine Ker 1237, while cautioning the Family Courts to not be carried away by allegations of commission of offences under the POCSO Act by a parent, noticed the growing tendency as early as in 2019,

to foist false crime against the biological father. The Court held as under: -

> ‘‘28. In our opinion, mere registration of a crime under the provisions of the POCSO Act against the parent of the ward is no assurance to a Family Court that allegation of sexual abuse made against him is nothing but true. The allegation made against the biological father could be true in rare cases, but could be wholly false also. The Family Court, before which such registration of crime is proved must necessarily apply its mind and endeavour to find out the true circumstances which activised the registration rather than being allured by the mere fact of registration. Unless a very cautious approach is adopted by the Family Court to ensure that information on which crime was registered is not frivolous and vexatious, many a innocent parent fighting for custody of his own ward would be victim of false implication of crimes under the POCSO Act. **There is a growing tendency in the recent years to foist false crimes against the biological father alleging sexual abuse of own child misusing the provisions of the POCSO Act when serious fight for custody of ward is pending resolution before the Family Courts. The Family Courts to whose notice registration of crime under the POCSO Act is brought owe an onerous responsibility to ensure that the registration of crime against the parent is not a ruse for defeating his legitimate claim for custody of the ward. The Family Courts ought to examine the outcome of investigation of the crime placed before the court and also take into consideration all relevant facts and circumstances which would help the Judge form a prima facie opinion as to whether the allegation of sexual abuse of the ward is baseless or not. Each case requires to be approached and evaluated on its**

own facts and we realise that no hard and fast approach could be laid in this respect at all. We do not mean to say that Family Courts should disregard the materials collected by the investigating agency in the crime and hold a total independent enquiry in order to get at the truth or veracity of the allegation. We make it clear that unless there are reliable materials capable enough to convince the allegation of sexual abuse to be well founded, mere registration of crime shall not be reckoned as a ground for rejecting the claim of the parent for custody of the child."

(Emphasis supplied)

42) In ***N. Chandramohan*** vs. ***State and Another***, 2019 SCC OnLine Mad 3666, the High Court of Judicature at Madras, highlighting the damage caused to a parent, in case of false accusations, made the following telling observations: -

"**11. There were instances when the attention of this Court was drawn to similar such incidents, where false complaint were given as if the husband has committed an offence under POCSO Act against the daughter and it was informed to this Court that such cheap tactics are adopted in the family court cases, just to arm twist the husband and make him fall in line. This Court was not willing to believe that such instances can happen and this case is an eye opener for this Court. This Court was made aware, the extent to which POCSO Act can be misused.**

12. The object of the POCSO Act was to protect children from offence of sexual assault, sexual

harassment, etc., and that is why the Act specifically provides for a legal presumption as to the commission of the offence and the culpable mental state, once a prosecution is launched under this Act. The burden of proof is upon the accused to prove that he had no such mental state with respect to the Act charged as an offence in that prosecution. The consequences of prosecuting a person under this Act are very serious and apart from providing for stringent punishments, the person who is prosecuted virtually comes down in the eyes of the society at large and he is virtually shunned from the main stream of the society."

(Emphasis supplied)

43) The judgments set out above thus recognise a trend of misuse of the provisions of the POCSO Act for extraneous considerations. In some cases, the provisions are invoked as a pressure tactic in divorce or custody proceedings, while in others they are used simply to settle scores or seek revenge. No doubt, the POCSO Act, under Section 22, provides for prosecution of persons making false complaints or giving false information in respect of Sections 3, 5, 7 and 9 of the POCSO Act respectively. However, by the time Section 22 is invoked substantial damage would be caused to the party falsely charged. Section 22 of the POCSO Act reads as under:-

"***22. Punishment for false complaint or false information.—****(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.*

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment, which may extend to one year or with fine or with both."

44) The possible misuse of the POCSO provisions was highlighted in the 240th Report on the POCSO Bill by the Parliamentary Standing Committee on Human Resource Development. The Report observed thus:-

"*11.4 The Committee observes that the National Commission for Protection of Child Rights, the statutory body at the national level meant to act as a watch dog for protection of child rights is in agreement with this provision. The Committee understands that the proposed law is meant to instill in children a sense of confidence to report abuse and exploitation instead of deterring them from reporting.* ***But at the same time, provision of this proposed law is not meant for settling scores and such attempts need to be curbed. The argument that the CrPC contains adequate provisions to deal with false complaints is also not very convincing.*** *The Committee has observed that all such legislations invariably have a provision which would serve as a deterrent in case of false complaints being made. The only*

thing is to ensure that such a provision is free from any unnecessary or uncalled for stipulation."

(Emphasis supplied)

45) Thus, it is clearly mentioned in the aforesaid report that the POCSO Act is not meant for settling scores and any attempt made to misuse the provisions would accordingly need to be curbed. Although Section 22 of the POCSO Act is meant to deter false complaints, yet by the time this provision comes into application, irreparable harm may already have been done to the accused. This harm can take two forms. First, the accused may suffer prolonged incarceration, with the loss of liberty and the other adverse consequences that ordinarily accompany the registration of an FIR. Secondly, the accusation may adversely affect guardianship or custody proceedings being litigated in a different forum. Therefore, we are of the considered opinion that certain precautions must be taken, within the four corners of the law, to prevent such harm from befalling the accused.

46) We shall now discuss the safeguards, the context in which they would come into play, and their scope.

SAFEGUARDS TO PREVENT IRREPARABLE HARM:-

47) While we are cognizant that the provisions of the POCSO Act are, in some situations, misused, it would be remiss not to bear in mind the avowed object and purpose for which the Act was enacted i.e., to provide a self-contained, comprehensive legislation to protect children from the offences of sexual assault, sexual harassment and child sexual exploitation and abuse material (CSEAM), with due regard to safeguarding the interest and well-being of the child at every stage of the process. Any precaution we envision to prevent irreparable harm to the accused in certain contexts and circumstances must, therefore, not run counter to the stated object of the Act, or dilute the stringency with which such offences are meant to be treated. What is needed is a balancing exercise: precautions that neither dilute the object of the Act nor weaken its provisions, while allowing sufficient leeway to ensure that

irreparable harm is not caused to the accused. Therefore, any safeguard we introduce should be read in this specific context.

48) Before the precautions to prevent such harm are set out, we must be clear as to the exact context in which they would apply. They would apply only when both of the following threshold conditions are met:-

i) *Firstly*, an offence under the POCSO Act is alleged to have been committed by a parent, or any other family member who is living under the same roof as the child victim.

ii) *Secondly*, a matrimonial dispute of some form, irrespective of whether it is before a court of law or not, exists between the parents of the child victim, thereby indicating the possibility of a strained relationship. It would be the duty of the police officer receiving the complaint to verify, at the time of receipt of the complaint, that a matrimonial dispute as aforesaid exists between the parents.

(i) <u>IN CASE OF A POLICE REPORT:-</u>

49) First, let us deal with irreparable harm being caused to the accused parent or a family member living under the same roof in the form of arrest by the investigating authorities. When the above-stated threshold conditions are met, post the registration of an FIR, we are of the considered opinion that the investigating officer should not act in haste or take coercive actions in the form of arrest immediately. Such caution, which must necessarily accompany the exercise of the power to arrest, has already been emphasized by a long line of decisions of this Court, and also by the plain words of the relevant statutory provisions. Arrests *vis-à-vis* POCSO offences should be no different. It is towards such statutory provisions and decisions that we now turn.

50) Section 35 Bharatiya Nagarik Suraksha Sanhita, 2023, (For short 'the BNSS') (*pari materia* to erstwhile Sections 41 and 41-A of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') pertains to when a police officer may arrest without warrant and reads thus:-

*"**35. When police may arrest without warrant.—** (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

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

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

(b) for proper investigation of the offence; or

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

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

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

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

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

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

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

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

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

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

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested

without a warrant by the officer who issued the requisition....”

(Emphasis supplied)

51) A bare reading of Section 35 of the BNSS itself reveals that the power to arrest is a statutory discretion vested in the police officer and is therefore not mandatory. It prescribes conditions that must be fulfilled before the discretion to arrest can be exercised. The police being entrusted with the power to arrest, and the power being lawfully exercised with proper justification are two different things. This has been aptly stated by this Court in ***Joginder Kumar* vs. *State of U.P and Ors.,* (1994) 4 SCC 260**, in the following manner:-

“*20....No arrest can be made because it is lawful for the police officer to do so**. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.** The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. **It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and*

> ***even so as to the need to effect arrest.*** *Denying a person of his liberty is a serious matter.... A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified....*"
>
> (Emphasis supplied)

52) This Court has on multiple occasions reiterated that arrest is not mandatory, even for cognizable offences, and that such power to arrest should be exercised only after scrupulously complying with the relevant conditions set out under Section 35 of the BNSS (erstwhile Sections 41 and 41-A of the Cr.P.C.). [*See*: ***Arnesh Kumar* v. *State of Bihar & Anr.***, *(2014) 8 SCC 273*, ***Satender Kumar Antil* v. *CBI & Anr.***, *(2022) 10 SCC 51*, ***Satender Kumar Antil* v. *CBI & Anr.***, *(2026) 7 SCC 311*].

53) This Court in ***Arnesh Kumar (supra)*** was tackling a similar issue i.e., the rampant misuse of Section 498A IPC r/w Section 4 of the Dowry Prohibition Act, 1961, wherein false allegations were levelled by the disgruntled wife against the husband and his relatives. In this context, it was observed that since arrest brings humiliation, curtails freedom and casts social stigma

forever, it would be prudent for a police officer to reasonably satisfy himself as to the genuineness of the allegation before proceeding to arrest the accused person(s). It was opined that scrupulously following, both in letter and spirit, the requirements laid down under Section 41 of the Cr.P.C. (now, Section 35 of the BNSS) would sufficiently take care of the problem. The directions issued in ***Arnesh Kumar (supra)*** read thus:-

> "*10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.*
>
> *11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*
>
> > *11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

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

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

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

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

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

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

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

(Emphasis supplied)

54) It would be apposite that we look into the parameters laid down under Section 35 of the BNSS (erstwhile Sections 41 and 41-A of the Cr.P.C.) which provides a protective shield against

unnecessary, hasty or mechanical arrests. Since, we are primarily concerned with offences under the POCSO Act, we only need to deal with the conditions governing arrest for cognizable offences, particularly those in Section 35(1)(b) of the BNSS (cognizable offences punishable with imprisonment for a term of up to seven years) and Section 35(1)(c) of the BNSS (cognizable offences punishable with imprisonment for a term exceeding seven years, or with death), respectively.

55) Section 35(1)(b) prescribes two conditions that must be satisfied before a police officer may exercise the discretion to arrest. *First*, the officer must have "*reason to believe*", on the basis of the complaint, information or suspicion that the person whose arrest is sought has committed the offence. *Secondly*, the officer must be satisfied that arrest is necessary: **(i)** to prevent the person from committing any further offence; or **(ii)** for proper investigation of the offence; or **(iii)** to prevent the person from tampering with evidence; or **(iv)** to prevent the person from making threats or promises to persons

acquainted with the facts of the case; or **(v)** to ensure the person's presence in Court whenever required, which cannot otherwise be secured.

56) Section 35(1)(c), on the other hand, permits arrest where the police officer has "*reason to believe*" that the person has committed the offence based on credible information received. Unlike, Section 35(1)(b), it does not require the officer to be satisfied that arrest is *necessary* on other grounds.

57) Despite some clear differences existing between Section 35(1)(b) and Section 35(1)(c) respectively, there runs a common thread across both the provisions, i.e., arrest is only allowed when the police officer has "*reason to believe*" that the offence in question has been committed by the person whose arrest is sought. No doubt, the existence of such '*reason to believe'* is a prerequisite even where arrest is sought for the alleged commission of offences under the POCSO Act.

58) In the present context, i.e., in cases where the threshold conditions are met, where a parent or relative living under the

same roof is alleged to have committed an offence under the POCSO Act against the child ***and*** where a matrimonial dispute of some form exists between the parents of the child victim, the investigating authorities may encounter some difficulties. In such instances, although the nature of allegations made in the FIR may indicate that such offence has been committed, yet the surrounding circumstances, more particularly, the strained relationship between the parents, may raise a doubt as to whether those allegations *simpliciter* can safely be relied upon. In other words, the investigating authority may hesitate to conclude that there is 'reason to believe' that the accused has committed the offence. Faced with such a conundrum, the investigating officer may find himself in a dilemma to proceed insofar as arrest is concerned and satisfy the requirements laid down under Sections 35(1)(b)(i) and 35(1)(c) of the BNSS, respectively. In such circumstances, something more would be needed to assist and aid the investigating authorities.

59) In this regard, in the facts of the present case, the role played by Dr. Lakshmi Sravanti Tanuku, Assistant Professor of the Department of Child and Adolescent Psychiatry, NIMHANS and Dr. Anamika Sahu, Assistant Professor of the Department of Clinical Psychology, NIMHANS, was an eye-opener for us.

60) Therefore, we are of the opinion that in aforesaid situations, the investigating officer or the Special Juvenile Police Unit ("**SJPU**") shall engage the services of an expert in child and adolescent psychiatry/clinical psychology in consultation with the District Child Protection Unit ("**DCPU**") or the District Legal Services Authority (DLSA) where DCPU is not available, of the concerned district, for the purpose of aiding the investigation. However, the investigating officer may, in exceptional cases, where the material is palpable, for reasons to be recorded in writing dispense with the engagement of the services of an expert in child and adolescent psychiatry/psychology. Such an expert shall ordinarily be engaged from the register maintained by the

DCPU under Rule 5(1) of the POCSO Rules, 2020, and shall hold the qualifications contemplated under Rule 5(5). Where the register does not include a suitable expert in child and adolescent psychiatry/clinical psychology, the investigating authorities may, in consultation with the DCPU, engage an expert from outside the register, provided that the expert holds equivalent qualifications.

61) Furthermore, if the Child Welfare Committee ("**CWC**") has appointed a support person qualified under Rule 5(6) of the POCSO Rules, 2020, to render assistance to the child in accordance with Rule 4(8), then such support person may accompany the child during the aforesaid psychological/psychiatric evaluation. It must be ensured that the evaluation is conducted in an independent manner, free from any influence of the disgruntled parent and the investigating authorities. Wherever possible and considered appropriate, the investigating officer may provide any additional material collected in the course of investigation thus far, which may render some assistance to the expert in their

evaluation. After due evaluation of the child, the expert shall submit a report, as expeditiously as possible, to the investigating officer, or the SJPU as the case may be, detailing the results of the psychological/psychiatric evaluation.

62) The evaluation conducted by the expert shall be strictly in consonance with all applicable principles/provisions of the POCSO Act and the POCSO Rules, 2020, respectively, and in a manner which ensures that the child is not put under any pressure or caused any discomfort or repeated harassment, at any stage. Further, we must clarify that the aforesaid psychological/psychiatric evaluation shall not in any manner disturb the procedure already envisaged under Rules 4(4) to 4(7) of the POCSO Rules, 2020 wherein the CWC would assess whether the child needs to be taken out of the custody of the child's family or shared household.

63) Upon receipt of the psychological/psychiatric evaluation report, the investigating authorities shall take the opinion of the expert into consideration, along with other relevant

material and circumstances, to decide whether there is a "*reason to believe*" that the accused has committed the offence, for the purpose of effectuating his arrest. At this juncture, it is important to clarify the following:

a. *First,* the investigating officer or the SJPU would not be bound by the findings or the contents of the expert report. As noted above, the discretion to arrest lies with the concerned police officer. The report is only a tool in aid of exercise of discretion diligently in the larger context in which the allegations of sexual abuse and/or sexual assault are levelled. It does not control it. Whether coercive steps in the form of arrest ought to be taken remains for the investigating officer to decide, after considering the report along with the other relevant circumstances of the case.

b. *Secondly*, the expert report shall not be the sole basis for filing of the chargesheet, or a closure report. Its purpose is limited to aiding the decision of the investigating agency. The contents of the expert report will be a relevant factor in the decision-making process of the investigating officer, in deciding whether to file a chargesheet or a closure report. The investigation shall continue in accordance with law.

(ii) <u>IN CASE OF A COMPLAINT UNDER SECTION 33 OF THE POCSO ACT:-</u>

64) We may also address ourselves on the manner in which the aforesaid safeguard would come into application in case a complaint made under Section 33 of the POCSO Act before the Special Court. Section 33 of the POCSO Act empowers the Special Court to take cognizance through two modes: (i) upon receiving of the complaint of facts which constitute such offence; and (ii) upon a police report of such facts. It is the first mode with which we are concerned here.

65) Remarkably, the BNSS does not envisage a complaint being filed before the Sessions Court. It prescribes the procedure for filing a complaint before a Magistrate. Whereas, in contrast, the POCSO Act vests the right in an aggrieved to approach the Special Court directly. Such an extraordinary procedure may have been envisaged by the legislature considering the sensitivity of time, vulnerability of the victim, and the need to trigger the protective measures provided under the POCSO Act at the earliest. Therefore, the

exercise of jurisdiction under Section 33 via the private complaint route must not be initiated lightly and the Special Court before issuing process must find sufficient grounds to believe that an offence has taken place.

66) Once such a complaint is received by the Special Court, it would apply its mind to the complaint and the facts disclosed therein. At this stage, the Court is not obliged to proceed further in terms of taking cognizance, and it may instead order the police to investigate into the offence alleged in the complaint. This would ultimately initiate the process applicable to a case arising from a police report.

67) In case, the Special Court deems it appropriate to proceed with the complaint itself, it has to ascertain whether there is a *prima facie* case against the accused in the complaint. The Special Court is not bound to take cognizance of an offence merely because a complaint has been filed. This application of mind by the Court would ensure that cognizance and issuance of process are not based on a complaint that is false or

vexatious. In other words, at this stage where the Special Court is applying its mind to the complaint as regards whether it should proceed to issue process, it is not conducting a full trial.

68) The Special Court would be said to have taken cognizance when it decides to proceed against the person accused of having committed that offence and not at the time when it was informed either by the complaint, or by the police report about the commission of an offence. Once the Special Court has taken note of the allegations, and applied judicial mind to the contents of the complaint and the material, it can be said that the Court has taken cognizance. What we are trying to convey is that as soon as the Special Court would take cognizance of the offence, it would issue process.

69) In the aforesaid context, the law as regards summoning of an accused is settled. Summoning is not a routine exercise of power, it requires due application of mind and caution. An order taking cognizance and summoning of an accused must

reflect that there has been application of mind to the facts of the case. The formation of this opinion shall be comprehensive of the overall facts and circumstances of the case and must reflect in the order. Although, the Court summoning the accused is not expected to venture into a detailed discussion on the merits of the case, yet it has to *prima facie* be satisfied that there are sufficient grounds to look further into the allegations. Ultimately, the decision to issue process should be made after the Court has looked into circumstances emerging from the record of the case.

70) The safeguards discussed by us in the foregoing paragraphs comes into application when the Special Court is dealing with a complaint where the threshold conditions are met, and it has to decide whether cognizance should be taken and summons be issued to the accused. Similarly, it is at this stage that the Special Court shall involve the services of an expert in child and adolescent psychiatry/clinical psychology. Such an expert shall conduct

psychiatric/psychological evaluation of the child victim and submit a report to the Special Court detailing the results of such evaluation. The Special Court shall take into consideration such report and other relevant circumstances and form an opinion on whether there are *sufficient grounds for proceeding* with the complaint. However, in exceptional cases, where the material is palpable, the special Court may, for reasons to be recorded in writing, dispense with the involvement of the services of an expert in child and adolescent psychiatry/psychology.

71) In our considered opinion, a Court while dealing with a complaint filed in the background of a matrimonial dispute of some form should be circumspect. This context requires the Court to take into account the overall circumstances leading to the filing of the complaint and reading between the lines. In such circumstances, the evaluation report would enable the Court to look into the allegations with care and a little more closely with abundant caution.

72) We direct that the safeguards enshrined in this judgment, for cases arising out of first information report (police report cases), shall apply to cases where investigation is still in progress on the date of this judgment. We further direct that the safeguards enshrined in this judgment insofar as private complaints under Section 33 of the POCSO Act, shall apply to cases where summons have not been issued as on the date of this judgment.

(iii) <u>SYNTHESIZING OUR APPROACH:-</u>

73) The rationale behind the approach set out above is simple. In some cases where the threshold conditions are met, a pre-existing strained relationship may make it difficult for the concerned authorities to decide, on the material before them alone, whether coercive action ought to be taken. To address this informational deficit, we have prescribed that the services of an expert in child and adolescent psychiatry/clinical psychology be engaged. After due evaluation of the child, the expert shall submit a report detailing the results of the psychological/psychiatric evaluation. On receipt of the

report, the authorities shall consider the expert's opinion, along with the other relevant material and circumstances, to decide whether coercive action ought to be taken against the accused. The procedure thus operates strictly within the four corners of the law. It is envisioned to avoid the irreparable harm in the form of an unwarranted arrest that may cause to the accused, while not diluting the objects of the POCSO Act, and the stringency of its provisions.

74) In order to actualize and give effect to the above approach, it is imperative that in all districts, the respective DCPU shall update the existing register maintained under Rule 5 of the POCSO Rules, 2020, to include names of experts in child and adolescent psychiatry/clinical psychology.

75) Our discussion in the foregoing paragraphs serve a further purpose. The courts dealing with remand and bail in cases that meet the threshold conditions should also examine whether, in taking coercive action, the investigating officer complied with the statutory provisions discussed above. This

would necessarily involve assessing whether the decision to arrest was taken having duly considered the circumstances in which the complaint arose, more particularly, the strained relationship between the parents. This provides a further safeguard against the prolongation of harm caused by an unwarranted arrest.

(iv) <u>ADVERSE EFFECT ON OTHER LITIGATIONS:-</u>

76) We may now briefly consider a related situation. The child who is the alleged victim of an offence under the POCSO Act may be the subject of guardianship or custody proceedings between the child's parents, and the offence may be alleged against one of the parents or against any other family member of that parent living under the same roof as the child. In such a case, the registration of the POCSO case may adversely affect that parent's interests in the guardianship or custody proceedings. If the complaint is made with *mala fid*e intent, its purpose may be to gain an upper hand in those proceedings. In such cases, the concerned court should adopt the approach

suggested by the Kerala High Court in ***Suhara* (*supra*)**, to which we have already referred. To reiterate, the Kerala High Court held that: **(i)** the mere registration of a case under the POCSO Act should not by itself give rise to an inference that the allegation is true, and should not be allowed to become a ruse for defeating that parent's legitimate claim to custody or guardianship; and **(ii)** the court concerned, after considering the relevant material, including the material collected by the investigating agency, shall, on a case-to-case basis, form a *prima facie* view as to whether the allegations are baseless.

77) Beyond the basic principles reiterated above, it is difficult for us to state precisely the course that the court concerned should follow. The multiplicity of facts and circumstances in which such situations may arise, makes any hard and fast rule impossible to conceive and impracticable to apply. How the matter should proceed is therefore for the concerned court to decide, in light of the basic principles laid down above and by due application of judicial mind.

CONCLUSION AND DIRECTIONS: -

78) In view of our findings above, we are fully convinced that FIR No. 76/2024 dated 28.03.2024 was registered only for the purpose of laying a foundation to handover the custody of the child back to Mother-'E'. This was obviously for the reason that even this Court had by its order of 29.03.2023 in SLP (C) No. 4869/2023 confirmed the grant of custody to the Father-'R'. Now, that the Report of the CBI has, after a threadbare investigation, found the case to be not maintainable, the very basis for Mother-'E' to seek custody of 'M' stands shattered.

79) We have deliberately refrained from making any further observations. Consequently, Civil Appeal arising out SLP (C) No. 1092/2024 is disposed of in the following terms:-

(a) FIR No. 76/2024, re-numbered as CBI Case RC0352026S0003, as registered by the CBI, ACB, for offences punishable under Section 10 of the POCSO Act, Section 75 of the JJ Act as well as Sections 323, 504, 506

read with Section 34 of IPC against the Father-'R', will stand quashed;

(b) Consequently, we direct the legal custody of 'M' will rest with 'R';

(c) We are conscious of the fact that since 24.03.2024, physical custody of 'M' has been with 'E'. Considering the overall facts and situations, the process of re-integration of 'M' with 'R' and his family needs to take place.

(d) Considering the sensitivity of the matter, we, for the limited purpose of re-integrating the physical custody of 'M' with 'R', remit the matter back to Family Court. The process of re-integration will be done by the IVth Additional Principal Judge, Family Court, Bengaluru. In the process, the Family Court will be advised by a Committee of Experts, consisting of:-,

I. Shri Vinayak Varma, SP, CBI

II. Ms. Shilpa D., SP, CBI;

III. Dr. Lakshmi Sravanti Tanuku, Assistant Professor of the Department of Child and Adolescent Psychiatry, NIMHANS; and

IV. Dr. Anamika Sahu, Assistant Professor of the Department of Clinical Psychology, NIMHANS.

80) The Committee, in the first sitting, which may be held at a very early date, will decide with whom the interim custody of 'M' should be, pending the reintegration. The Committee will, keeping in mind the observations in the judgment and the report of the CBI, be at liberty to take a call on whether the interim physical custody should be with the Child Welfare Committee or any other neutral place or even with the mother. At this stage also, visitation arrangements can be made for 'R' and 'E', wherever necessary.

81) Their report on interim custody may be given to the Family Court.

82) After the final integration of 'M' with 'R' is also done, the Family Court shall make an appropriate order for visitation to 'E'.

83) Mother-'E' shall fully cooperate with the process. However, we make it clear that any disobedience of the orders or attempt to disobey will result in serious consequences.

84) The passports deposited with the registry of this Court by both parties shall be transmitted to the IVth Additional Principle Judge, Family Court, Bengaluru, who may return the same to the parties after the process of reintegration of 'M' with 'R' is complete.

85) We direct that the parties herein, along with the child 'M', to report at 10:00 A.M. in the Chambers of IVth Additional Principal Judge, Family Court, Bengaluru, along with a copy of this judgment on 28.09.2026.

86) Let a copy of this judgment be sent to IVth Additional Principal Judge, Family Court, Bengaluru. Let a copy of this

judgment be also sent to Shri Vinayak Varma, SP, CBI, Ms. Shilpa D., SP, CBI, Dr. Lakshmi Sravanti Tanuku, Assistant Professor of the Department of Child and Adolescent Psychiatry, NIMHANS and Dr. Anamika Sahu, Assistant Professor of the Department of Clinical Psychology, NIMHANS so as to enable them to be also present at 10:00 A.M. before the Family Court.

Criminal Appeals arising out of SLP (Crl.) No. 7710 /2024, SLP (Crl.) No. 7711/2024 and SLP (Crl.) Nos. 10197-10198/2024:

87) These are filed by Mother-'E' & Father-'R' challenging the order of the Karnataka High Court in Criminal Petition No. 1565/2021 connected with Criminal Petition No. 8562/2021 and Criminal Petition No. 10029/2021. 'E' along with one 'S' sought quashment of chargesheet bearing CC No. 25342/2018 arising out of Crime No. 165/2018 dated 05.06.2018 pending before the XXX, ACMM Court at Bangalore for offences punishable under Sections 120B, 416, 417, 418, 419, 420, 109, 504, 506 read with Section 34 of the IPC along with Sections 75 and 87 of the JJ Act and all further investigation and

proceedings. The High Court, while quashing the chargesheet for offences under Sections 416, 417, 418, 419, 420, 504, 506, 109 read with Section 34 IPC, refused to quash the proceedings for the offences under Sections 75 and 87 of the JJ Act. The High Court also allowed the petition of Father-'R', namely, Criminal Petition No. 10029 of 2021 and directed further investigation under Section 173(8) Cr.P.C. The Mother-'E' has challenged the order by filing two special leave petitions, one challenging the refusal to quash offences under Sections 75 and 87 of the JJ Act and second against the conduct of further investigation. 'R', the complainant in Crime No. 165 of 2018, is aggrieved by the quashment of offences under the Sections referred to above. 'S', who was a petitioner before the High Court, has not filed any Special Leave Petition. We have seen the gravamen of the allegations. Crime No. 165 of 2018 was registered on 05.06.2018 when the acrimony between the parties was at its peak. Today, much water has flown under the bridge, and we have while disposing of the civil appeal arising out of special leave petition (C) No. 1092

of 2024 made orders, keeping in mind the best interest of the child. Hence, we direct that no further action need be taken pursuant to FIR No. 165/2018 dated 05.06.2018 and the said FIR No. 165 2018 and further proceedings thereto, including the charge sheet, shall stand quashed.

88) The petition filed by Mother-'E', being GWC No. 194/2024, will stand terminated. We have terminated this fresh guardianship proceedings, because the foundation of such petition is the lodgement of FIR No. 76/2024. With the said FIR itself having been quashed, there is no basis to continue this fresh guardianship petition.

89) The appeals stand disposed of in the above terms.

CONTEMPT PETITION (C) NO. 208 OF 2024

90) This Contempt Petition is filed by Father-'R' in Civil Appeal arising out of SLP (C) No. 1092 of 2024. The petitioner alleges breach of order dated 22.01.2024 passed by this Court which had stayed the visitation rights granted to the mother by the orders of the High Court dated 14.12.2023 and

05.01.2024 and continued the visitation rights granted by the judgment dated 31.01.2023. Considering the order that we have made in Civil Appeal arising out of SLP (C) No. 1092 of 2024, to give a quietus to all acrimonious litigation in the larger interest of the child, we close this contempt petition. The contempt petition also stands disposed of. No further orders are needed therein. There is a further prayer to direct withdrawal of Crime No. 76 of 2024. That prayer also does not survive in view of the fact that we have quashed the proceedings. We do not propose to proceed further in the matter.

DIRECTIONS VIS-À-VIS SAFEGUARDS: -

91) The safeguards set out in this judgment will be strictly observed by the concerned authorities. However, as clarified, they will operate in the case of proceedings instituted on first information reports, to investigations which are underway on the date of this judgment. Similarly, insofar as private complaints under Section 33 are concerned, the

safeguards will apply to cases where summons have not already been issued, as on the date of this judgment.

92) A copy of this judgment be sent to Registrar Generals of the High Courts, with a request to place the same before the Hon'ble Chief Justices of the High Courts. The High Courts shall transmit a copy of this judgment to every criminal court after drawing particular attention to para Nos. 47-77 hereinabove.

93) We further direct that a copy of this judgment be sent to the Chief Secretaries of all the States & Union Territories, for onward transmission to every police station after drawing particular attention to para Nos. 47-77 hereinabove.

.....J.

[J.B. PARDIWALA]

.....J.

[K. V. VISWANATHAN]

New Delhi;
September 24, 2026