CHAPTER-IV

RELEVANT PROVISIONS OF CODE OF CRIMINAL PROCEDURE AS APPLICABLE TO DOWRY RELATED DEATHS

A. Introduction

Section 304-B Indian Penal Code is a new substantive offence added to the offences against woman. It is settled law that substantive law has no value unless it is regulated by a fair and proper procedure. Criminal law deals both with preventive and procedural law. The code not only contains the provisions as to how trial shall be held but at the same time it contains the provisions as to how the investigation and arrest of the accused shall be conducted. Through it may be argued the introduction of new offence dowry related death punishable under section 304-B, Indian Penal Code, is violative of the rights of the accused being ultra vires the constitution particularly article 20(1) of the Constitution prescribing the rule of double jeopardy but in view of the increasing rates of death of brides for lust of dowry this section was all necessary and the Parliament has rightly enacted this specific substantive offence (304B IPC) and made part of the Penal Code. This amendment introducing section 304B in the Indian Penal Code, necessitated the amendment in the Criminal Procedural Code, therefore, it was amended to secure mandatory post-mortem examination of a bride if she dies within seven years of her marriage otherwise presumption can safely be drawn against the husband and other relatives of husband. However, discussion will be carried out wherever relevant for seeking aid under the offence of dowry related death and dowry related offences.
B. Amendments Introduced in the Code relating to relevant law

Not only by Act of 1983, 498A created a new offence in the Indian Penal Code, Section 174, Criminal Procedure Code was also amended by the same Act (Section 3) to secure post-mortem in case of suicide or death of a woman within seven years of the marriage. Keeping in view the legislation has also amended and inserted sections 113-A and 113-B in Indian Evidence Act for raising the presumption of dowry suicidal death and dowry related death.

C. Investigation in Dowry related cases

Section 154 Cr. P.C. speaks of an information relating to the commission of a cognizable offence to an officer-in-charge of a police stations. After the information is reduced into writing the officer-in-charge of a police station may, without the order of a Magistrate Investigate any cognizable offence under section 156 Cr. P.C. Any magistrate empowered under section 190 Cr. P.C. may also order such an investigation as above mentioned. The officer-in-charge after receiving information of a cognizable offence shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Govt. may, by general or special order prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. Under section 161 of Cr. P.C. any police officer making an investigation may examine orally and person supposed to be acquainted with the facts and circumstances of the case. it was held in Mohd. Jainal Aladin v. State of Assam\(^1\) that the investigating officer has to perform his duties with the

sole object of investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused.

It is the duty of the investigating officer to record the version given by the opposite party i.e. complaint and also to proceed with the investigation on the case on the basis of version and cross version. Investigation does not mean to prosecute the accused person by any means. It is the duty of the investigating officer to verify the statement or disclosure of any relevant materials to arrive at a conclusion that the witnesses are telling nothing but truth. Further, it was held that when in regard to the same incident, there are two versions one of the complaint party and other by the opposite party, the police have to record the statements of both the parties and on the basis of the material collected by them have to come to the conclusion which party has to be challaned.

Further, in the case of Mohd. Jainal Aladin v. State of Assam, it was held that investigating officer has to perform his duties with the sole object of investigating the allegations and in the course of investigation he has to take into consideration the material whether against or in favour of the accused.

The observations made above are relevant so far as the investigation in dowry-death and dowry related cases in concerned as many times accused responsible for the death of the bride and attempt, to present a twisted version by concealing the true facts and try to convert the case of unnatural death to a natural death. Therefore, investigation in such like cases assumes great importance as the fate of many person depends on the mode of investigation.

(a) Further investigation (S. 173(8) Cr. P.C.)

In case of **K. Uma Maheshwari v. Addl. Director General of Police**\(^3\), it was held that express power is provided to police officers-in-charge of police station, in section 173(8) to further investigate matter when fresh facts came to light. Further investigation contemplated under section 173(8) on fresh facts by officer-in-charge of police station after taking cognizance by Magistrate on basis of investigation report does not amount to reinvestigation but it is continuation of earlier investigation. Investigation officer in such cases can file supplementary challan (Police Report).

In case of **Shaji Vs. State of Kerala**\(^4\) it was observed that police submitted report under section 173(2) Cr. P.C. Magistrate took cognizance. Magistrate is competent to order further investigation and taking cognizance of offence on the basis of police report filed under section 173(2).

(b) Examination of witnesses by police (S. 161 Cr. P.C.)

Section 161 Cr. P.C. authorizes the investigating officer to record the statement of witnesses during the course of investigation. Police officers being interested in the success of their case many times record the statements of witnesses sometimes without even informing the persons to whom these statements relate to. Sometimes the investigating officers fail to mention the important causes relating to the facts of the case or sometimes due to inefficiency and because of biased attitude or extraneous reasons they intentionally conceal the material facts and do not record them in the statements of witness though actually brought to their notice by these witnesses. Therefore, the courts instead of giving credibility to these statements mostly rely upon the statements of witnesses what they actually depose on oath before the Court. This section runs as under:

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\(^4\) *Shaji Vs. State of Kerala,* 2003 (4) RCR (Criminal) 66 (Kerala) (D.B.)
1. Any police officer making an investigation under this chapter, or any police officer not below such rank as the State government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

2. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

3. The police officer may reduce into writing any statement made to him the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

[Provided that statement made under this sub-section may also be recorded by audio-video electronic means.]\(^5\)

(c) **Arrest of Accused in Dowry related death and dowry related cases.**

Under Section 41 Cr. P.C. any police officer may without an order from a Magistrate and without a warrant, arrest any person --

1. Who commits, in the presence of a police officer, a cognizable offence;\(^6\)

2. against whom a reasonable complaint has been made, or credible information has been received, or

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\(^5\) Inserted by Act 5 of 2009, Section 12 (w.e.f. 31-12-2009).

\(^6\) Subs. by Act 5 of 2009, Section 5.
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 following condition are satisfied, namely :-

(i) The police officer has reason to believe on the basis of 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 reason in writing for not making the arrest.]

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7 Inserted by Code of Criminal Procedure (Amendment) Act, 2010 (Act No. 41 of
Though all the offences related to dowry and dowry death (as per Schedule 1 of the Code of Criminal Procedure) such as 498A, 405, 406, 302, 304-B, 306 and 307 Indian Penal Code etc. are cognizable and non bailable and any person involved in these offences can be arrested without a warrant.

However, as required by section 8 of the Dowry Prohibition Act, arrest of the persons for the offence provided by the Dowry Prohibition Act can only be made under section 42 Cr. P.C. and the requirement therein is that such arrest cannot be made except with a warrant or an order of Magistrate. Section 8 of the Dowry Prohibition Act, 1961, runs as under:

(d) **Sec. 8 : Offences to be cognizable for certain purposes and to be nonbailable and non-compoundable** –

(1) The code of Criminal Procedure, 1973 (2 of 1947) shall apply to offences under this Act as if they were cognizable offences-

a) for the purpose of investigation such offences; and

b) for the purpose of matters other than-

i) matters referred to in section 42, of that code; and

ii) the arrest of a person without a warrant or without an order of magistrate.

(2) Every offence under this Act shall be nonbailable and non-compoundable.

Section 2(c) of the Code of Criminal Procedure, 1973, defines “Cognizable” means an offence for which and cognizable case means a case in which, a police officer may, in accordance with First Schedule, or under any law for the time being in force arrest without a warrant.
If the offence is cognizable, the police can arrest a person alleged to have committed the offence without any warrant. However, the person who is alleged to have been involved in a dowry offence punishable under the Dowry Prohibition Act can be arrested only when a Magistrate has ordered for his arrest. The purpose of this provision is obvious. It has been seen that when a dowry offence takes place, the people from one side want to implicate every member of in-laws of the bride against whom offence is alleged to have been committed.

D. Anticipatory Bail

(a) Anticipatory bail (S. 438 Cr. P.C.)

Section 438 Cr. P.C. authorizes the High Court or the Court Session to grant bail to accused on certain conditions, if they are able to convince the Court about their false accusation and their apprehension of arrest in any cognizable offences. After registration a case under cognizable offence the police sometimes tries to act as ultimate master by apprehending any person and subject him to humiliation and harassment in the police station etc. This section provides a remedy against the hostile attitude of the police at the instance of some powerful persons or for some other extraneous reasons to involve respectable persons falsely. But the courts only grant anticipatory bail when it is fully convinced that no prima facie case is made out from the material collected during investigation by the police or if it appears from the face of what is produced before the court at the time of presentation of application for anticipatory bail that the accused have been roped in falsely.
(b) S. 438 – Direction for grant of bail to person apprehending arrest

[(1)] Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of the police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the court grants an interim order under subsection(1), it shall forthwith cause a notice being not less than

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8 Sub Section (1) substituted by the Cr. P.C (Amendment) Act, 2005
seven days notice, together with a copy of such order to be served on Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing the final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court or the Court of Session makes a direction under sub section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including:-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make 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 any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the court;

(iv) such other conditions as may be imposed under sub section (3) of the section 47, as if the bail were granted under that section.
(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrants in conformity with the direction of the court under sub section (1).

(c) **Anticipatory bail not to be allowed in dowry related death cases;**

In recent case of *Manoj Aggarwal v. State of Chhattisgarh*\(^9\) Hon’ble Chhattisgarh High Court while observing the facts of the case held that the plea that the court has no power to grant anticipatory bail in case punishment with death or imprisonment for life viz. an offence under section 304B of Penal Code cannot be accepted. The power can be exercised by a court in a given case where there is reasonable apprehension that a person is likely to be arrested in connection with nonbailable offence the real test is not an accusation under a particular provision or section, but whether in the opinion of the court, ‘it is a case’ for exercise of powers under section 438 of Cr. P.C. Thus, what is required to be seen is not the ‘Section’ under which a particular person is charged but the facts and circumstances involved in the case.

In the present case under section 304B Penal Code, considering the fact that immediately after the unfortunate incident all the relatives of the deceased had given signed statements that there was neither any settlement of dowry nor

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any demand made nor had the deceased wife ever complained
about any ill-treatment or torture, the High Court granted
anticipatory bail for a limited period. It was further directed that
within a period of 30 days from the date of their arrest and
release on bail pursuant to this order, the applicants shall move
an application under section 439 of Cr. P.C. for grant of regular
bail. If, however, they fail to make such an application within
the said period of thirty days, the order of anticipatory bail shall
become inoperative on the expiry of the said period of thirty
days.

(d) Anticipatory bail granted to accused living separately
from husband:

In Jatto Bai v. State of Punjab\(^{10}\), it was observed that
main accused (husband & father-in-law) were already arrested
and interrogated. Thus it was held that it be not necessary to
interrogate other accused (mother-in-law) and Sister-in-law) in
custody and anticipatory bail was allowed to both.

In the case of Om Parkash v. State of Haryana\(^{11}\) bail in
dowry death was allowed to father, mother and brother of
husband on the plea that they lived separately and had no
occasion to meddle in demand of dowry. It was observed that the
merits are to be adjudicated during trial of the case.

In the case of Neelam Saxena Vs. State of Haryana\(^{12}\) the
Hon’ble High Court granted bail to the husband’s sister (sister-n-
law) who is residing separately and no allegation was attributed
to her in the FIR.

(e) Anticipatory bail allowed in case of vague allegations.

In case of Gajjo Devi Vs. State of Haryana\(^{13}\) in a dowry
related death case there was allegation of demand of dowry and

\(^{10}\) Jatto Bai Vs. State of Punjab, 2000(1) RCR (Cr.) 444 (P&H).
\(^{11}\) Om Parkash Vs. State of Haryana, 2003(1) RCR (Cr) 216 (P&H)
\(^{12}\) Neelam Saxena Vs. State of Haryana 1(2000) DMC 33 (P&H)
\(^{13}\) Gajjo Devi Vs. State of Haryana 2002(4) RCR (Cr.) 579 (P&H)
pouring Kerosene oil against husband. Bail allowed to mother-in-law who was in custody for 11 months. There was a vague allegation of demand and beating against her.

In case of **Shyam Sunder v. State of Haryana**\(^{14}\), it was observed that allegations against accused (i.e. husband’s younger brother, sister and brother’s wife) of general nature. Anticipatory bail allowed to them.

There are certain conditions in which the Anticipatory bail should be allowed e.g.

a) Bail to petitioners not named in the FIR – *Des Raj Dang Vs. State of Pb. II (221) DMC 627 (P&H)*

b) Pre-arrest bail can be allowed pending final disposal of bail application – *Parminder Singh Vs. State, I (2000) DMC 191 (Delhi)*.

c) Bail allowed on account of suppression of important documents and case – diary – *Kamla Bai Shriwas Vs. State of Chhattisgarh, II (2002) DMC 428 (Chhattisgarh)*.


e) No allegation against accused at the time of inquest – *Sushil Vs State of Chhattisgarh, I (2002) DMC 250.*

f) Accused initially found innocent should be granted Anticipatory bail – *Dr. Subhash Kholia Vs State of Raj. I (2002) DMC 19 (Raj.)*

g) Filing of charge sheet is not a ground to reject anticipatory bail- *Bharat Chaudhary & Anr Vs. State of Bihar & Anr, (2003) SCC (Cr.) 1953.*

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\(^{14}\) *Shyam Sunder Vs. State of Haryana, 1999(3) RCR (Cr) 708 (P&H).*
h) Recovery of dowry articles is no ground to deny anticipatory bail – Anil Mehra Vs. State of UT Chandigarh, II(2000) DMC 235.

i) Bail in complaint case after cancellation of report by police - Ajit Singh vs. state of Haryana, II (2000) DMC 95 (P&H)

j) Seven days notice in writing in case of non-registration of FIR- Prem Wati Vs. State (NCT of Delhi), II(2001) DMC 701

In certain conditions, Anticipatory bail should not be allowed e.g.

a) Anticipatory bail is not to be allowed in case of issuance of nonbailable warrants – Dr. Ebenezer Vs. State of Karnataka, 2003(1) RCR 284.

b) It should be rejected when investigation not yet complete- Ranjana Vs. State, I(2002) DMC 288 (Karnataka)

c) Cancellation of bail on the ground that earlier statement was given under pressure – Madhukar Deorao Kulkari, I (2002) DMC 769 (Bombay)

d) Grand of bail without notice is not just – UoI Vs. Yusuf Razak Khanani and Ors, 2003 SCC (Cr.) 1963.

e) It is not maintainable before Sessions Court after it is rejected by High Court – Suresh Chand Vs. State of Raj. I(2002) DMC 159.

E. **Regular Bail**

Bail for offences relating to dowry death and dowry related offences; (Section 304B, 498-A, 302, 306, 406, 506 IPC and 3 Dowry Prohibition Act)

Offences relating to dowry an dowry related deaths are nonbailable offences. Bail cannot be claimed as a matter of right in nonbailable offences. It depends upon the discretion of the Magistrate or the Sessions Judge to grant or not to grant bail to persons involved in these offences. Section 437 of code of Criminal Procedure relates to bail in nonbailable offences.

F. **Blanket Bail**

It has been held in important case of **Gurbaksh Singh v. State of Punjab**\(^{15}\) that if a direction is issued under section 438(1) to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”, such a direction would amount to a ‘blanket order’ of Anticipatory bail, an order which serves as a blanket to cover or protect any every king of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possible be had Such a ‘blanket order’ of anticipatory bail is not contemplated by section 438 as the section requires that the applicant must have reasonable grounds to believe that he might be arrested for having committed a non-bailable offence. Moreover, such a ‘blanket order’ would cause serious interference with both the right and duty of the police in the matter of investigation. Such an order would become a charter of lawlessness and a weapon to stifle prompt investigation into offence which could not possibly be predicated when the order was passé. Therefore, the Supreme Court has held that a ‘blanket

\(^{15}\) **Gurbaksh Singh Vs, State of Punjab, AIR 1980 SCC (Cr.) 465, 488-489.**
order’ of anticipatory bail must take case to specify the offence or offences in respect of which alone the order will be effective.

**Bail to Juvenile under section 439 Cr. P.C. in dowry related death**

In the case of **Hardip Singh v. State of Punjab**\(^{16}\) it was held by the Punjab & Haryana High Court that denial of bail to a juvenile can only be allowed only under exceptional circumstances. It may have been an altogether different matter if the juvenile had committed heinous crime like rape and murder and belonged to a family with a history of criminal acts and unlawful behaviour. In such an eventuality denial of bail may have been justified but it would be totally unjustified in the present case. Further, it was observed that the question the Court should have put to itself was whether detention of a juvenile would be more detrimental to his moral, physical or psychological health as opposed to his release on bail and return to the security of his home and love to his family. The court completely misdirected itself by denying bail to the juvenile. The juvenile has already suffered incarceration in this case since April, 2001. It is true that the juvenile is being detained in Borstal Institution and Juvenile Jail but even so the grounds for denying the bail are not valid. A juvenile should be in the care and custody of his extended family and even if his parents are in custody as appears to be the case herein. Further, it was held that offence under section 304B IPC is such an offence where quite often even a comparatively meek and a mild person can get involved when the complainant casts the net wide enough to name the entire family including married sister-in-law of the deceased and unmarried siblings of the husband of the deceased, and in some cases even juvenile relatives. Therefore, it does not

\(^{16}\) **Hardip Singh Vs. State of Punjab,AIR 2002(1) RCR (Cr.) 401 =2002(1) CC Cases 394 (P&H)= II(2002) DMC 76.**
appear to be a case of juvenile who will be looked down upon as a depraved person the society if released on bail

G. Quashing of F.I.R.

While discussing the facts of the case of *Bhupinder Kaur* v. *State of Punjab*\(^{17}\), it was observed that all the members of family of husband roped in including two minors. FIF against the minors was quashed holding that from the reading of the FIR, it is evident that there is no specific allegation of any act against petitioners Nos. 2 and 3, which constitute offence under Section 498A, I.P.C. I am satisfied that these two persons have been falsely implicated in the present case, who were minors at the time of marriage and even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by these two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in this case. The initiation of criminal proceedings against them in the present case is clearly an abuse of process of court.

**Bail on Ground of filing Challan (Sec. 167 (2), Cr.P.C.)**

Hon’ble Supreme Court in case of *Asa Singh* v. *State of Punjab*\(^{18}\), held that the accused gets an indefeasible right to get bail if he makes a bail application under Section 167(2) of the Code of Criminal Procedure before the challan is put up. Subsequent filing of challan during pendency of the bail

\(^{17}\) 2003 (2) RCR (Cr) 413.
\(^{18}\) 2002(1) RCR(Cr) 373 = 2002(1) cc Cases 374(P&H).
application will not extinguish indefeasible right of the accused to get bail. However, in this case the right of the accused to invoke the provisions of Section 167(2) of the Code of Criminal Procedure was not in subsistence on 06.01.2000 when challan had already been filed on 27.12.1999.

H. Inquest Proceedings in dowry related deaths (Sec. 174, Cr.P.C.)

Section 174, Cr. P.C. provides for mandatory inquest proceeding in case of death of a bride within seven years of her marriage to be conducted by Executive Magistrate, etc.

I. Cognizance of cases on Police Report or Private Complaints

(a) Who may take Cognizance? (Sec. 190, Cr.P.C.)

Under Section 190, Cr. P.C., a Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. He may do so suo moto in taking cognizance of the offence. Whether cognizance of an offence is suo moto or on police report or on complaint, application of mind by the Magistrate is required.

(b) Who may file complaint (Sec. 198A, Cr.P.C.)

With other amendments, Section 198A was added to the Criminal Procedure Code authorizing persons aggrieved to file complaint for offence punishable under Section 498A relating to cruelty against the woman against the husband and other relatives. This section gives details of the person on whose
complaint cognizance can be taken. In short, these persons should be related to the lady in near relation.

(c) **Committal of dowry related death cases (Sec. 209)**

It has been observed as per the facts of the case of *Bajrang Lal v. State of Rajasthan*\(^{19}\) that under Section 209, the Magistrate is only to examine the police report and other documents mentioned in Section 207 and find out whether the offence is exclusively triable by the Court of Session. Once, he reaches to this conclusion, he has to commit the case for trial to the Court of Session. In forming the above opinion, the Magistrate is not to weigh the evidence and probabilities in the case, he is not required to hear the accused. He is only to consider whether a prima facie case is disclosed or not and is not competent to satisfy about the merits of the case whether a prima facie case is made out or not.

(d) **Quashing of FIR under Inherent Powers of the High Courts (Sec. 482, Cr.P.C.)**

Section 482, Cr.P.C. empowers High Court with inherent powers to pass any order as may be necessary as to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justices. With the aid of this section, the High Court can even quash the first information report if it is found that the same has been filed without any basis with the sole aim to harass and humiliate the persons so named therein. Therefore, in order to avoid legal process to be issued against them in cases concerning dowry and dowry related death etc. The persons involved therein may invoke the jurisdiction of High Court with the prayer to quash the proceedings pending against them.

\(^{19}\) 2003, Cr. L.J. 1127.
(e) Framing of Charge

Section 240 deals with the framing of charge in warrant cases by the Magistrate. This section runs as under:

1. If upon, such consideration, examination, if any, and hearing, the Magistrate is of the opinion that there is a ground for presuming that the accused has committed an offence triable under this Chapter, in which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

2. The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or the offence charged or claims to be tried.

(f) Discharge of Accused

At the time of framing of charge, if the Court finds material relied upon by the prosecution or complainant prima facie insufficient and the court is of the opinion that there are grounds to presume that the accused has or have been falsely implicated in the case, then the following sections empower the court to discharge the accused:

(g) Section 239:

If, upon considering the police report and the documents sent with it under Section 173, Cr.P.C. and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for doing so.
(h) **Section 245:**

When accused shall be discharged - (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. (2) nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(i) **Section 227:**

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reason for doing so.

Thus, the Code not only contains the provisions as to how trial shall be held but at the same time it contains the provisions as to how the investigation and arrest of the accused be conducted.

(j) **Trial of the Case**

The trial regarding dowry cases are conducted before the Sessions Court. If the Judge after going through the record and documents submitted, and after hearing the prosecution and the accused comes to the conclusion that no sufficient ground exists to proceed against the accused, he shall discharge him. The reasons, however, should be recorded in writing. An order of discharge may be passed only where court is almost certain that there is no prospect of conviction and that time of the court need

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20 Section 227, Cr.P.C.
not be wasted by holding a trial.\textsuperscript{21} If after consideration and hearing, the judge is of the opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.\textsuperscript{22} The accused is entitled to a copy of the statement of the complaint before framing of charge.\textsuperscript{23} Where a charge under Section 302/34, I.P.C. and an alternative charge under Section 304B, I.P.C. was cancelled, the Delhi High Court held that the cancellation of charge after evidence was led was illegal. It did not amount to acquittal and had no effect on the case and the accused was convicted under Section 304B, I.P.C.\textsuperscript{24}

If the accused pleads guilty, the judge shall record the plea and may, in his discretion, convict him thereon.\textsuperscript{25} The plea of guilty only amounts to an admission that the accused committed the acts alleged against him. It is not an admission of guilt under any particular section of the criminal statute.\textsuperscript{26} Therefore, if the facts proved by the prosecution do not amount to an offence, then the plea of guilty cannot preclude an accused person from agitating in the High Court the correctness of his conviction.\textsuperscript{27} If the accused does not plead guilty, then the accused shall be allowed to enter into defence and evidence and examination of the witnesses shall be held. After hearing arguments and points of law, the judge shall give a judgement in the case. If the accused is convicted, the judge shall hear the accused on the question of sentence, and then pass sentence on

\textsuperscript{21} Sushil Ansal, V. State, 2002 Cr. LJ 1369 (Del).
\textsuperscript{22} Section 228, Cr.P.C.
\textsuperscript{23} Suresh Kumar Upadhayay v. State of U.P., 2002 Cr. LJ 1852 (All).
\textsuperscript{24} Prakash Chander v. State, 1995 Cr LJ 368 (Del).
\textsuperscript{25} Section 229, Cr.P.C.
\textsuperscript{26} Major Anand, AIR 1960 J&K 139.
\textsuperscript{27} Bantra Kunjanna, AIR 1960 Mys 177.
him according to law.  

The court shall give an opportunity to the accused himself to place before it relevant material having a bearing on the question of sentence. It is not sufficient for the court to merely hear the State counsel and the counsel for the accused on the question of sentence.  

28 Sections 234 and 235 of Cr.P.C. 