

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23<sup>RD</sup> DAY OF JULY, 2021

BEFORE

THE HON'BLE Mr. JUSTICE G. NARENDAR

**WRIT PETITION No. 11028/2021 (GM-POLICE)**

BETWEEN :

Manish Maheshwari  
Son of Mr. Mali Ram  
Maheshwari  
Aged about 44 years  
Residing at 1011  
Prestige White Meadows  
Next to Whitefield Police Station  
Whitefield, Next to hope farm  
Whitefield  
Bengaluru – 560 066.

... Petitioner

(By Sri. C.V. Nagesh, Sr. Adv., for  
Sri. Mrinal Shankar, Vishwas N., Manu Kulkarni, Advs.)

AND :

State of Uttar Pradesh  
Through Loni Border  
Police Station  
Loni Road, Johripur  
Ghaziabad, UP – 201102.

... Respondent

(By Sri. P. Prasanna Kumar, Adv.)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash the Notice dated 21.06.2021 vide Annexure-A issued by the respondent under Section 41-A of Cr.P.C. and etc.

This Writ Petition coming on for Orders this day, the Court made the following:

**ORDER**

Heard the learned Senior counsel Sri. C.V. Nagesh along with Sri. Mrinal Shankar, Sri. Vishwas N. and Sri. Manu Kulkarni, learned counsel for the petitioner and learned counsel Sri. Prasanna Kumar P, for the respondent.

2. Brief facts are that the petitioner is an employee of Twitter Communications India Private Limited (for short TCIPL) and that he is the revenue head in-charge of advertising and sales. He being a senior employee of the company TCIPL, a public designation of Managing Director is provided to the petitioner but he has not been appointed as the Managing Director in terms of Section 2(54) of the Companies Act. Therefore the petitioner has never been and is not a member of the Board of Directors of TCIPL. That the said fact is borne out by the Company Master Data maintained by the Authority and which fact is made available publicly on the website of the Ministry of Corporate Affairs, a copy of

which is produced as Annexure-C. A bare perusal of Annexure-C would reveal that the petitioner is not one of the Directors amongst the three named in the master data. It is also relevant to note that the address of the registered office of TCIPL is described as C-20, G Block, Near MCA Bandra Kurla Complex, Bandra (E), Mumbai, Mumbai City, Maharashtra – 400 051, India and the address of the other office, where all or any books of accounts and papers are maintained is described as Unit No. 101, First Floor, Tower ‘B’, RMZ Infinity, Old Madras Road, Benniganahalli, Bengaluru – 560 016, Karnataka, India. The e-mail ID in the master data is akapoor@twitter.com. The date of incorporation is shown as 20.02.2013. The petitioner is discharging his duties as an employee of TCIPL at the registered office at Bengaluru and is also residing at Bengaluru in the address detailed in the cause title.

3. The circumstances compelling the petitioner to approach this Court are as under:

A complaint came to be registered on 15.06.2021 at 23.20 hours on the information furnished by one Sri. Naresh Singh, Sub-Inspector, Thana Loni Border, Ghaziabad, U.P., India. In the said complaint 9 accused were named and action was sought against the accused on the ground that they are responsible for the transmission and further transmission of certain tweets and video. The allegation, in sum and substance, against accused Nos. 8 and 9 is that they failed to stop the transmission by removing the tweets despite being made aware that the incident on which the tweets are based is a false news and that false news should not be propagated. The background of the incident that led to the complaint and tweet is that there was an incident of an aged person by name Sri. Abdul Samad Saifi who was beaten and his beard was forcibly chopped off. The physical occurrence of the incident was videographed and the said video came

to be uploaded on the social media platform popularly known as Twitter (8<sup>th</sup> accused). That the video that was uploaded was a doctored video and the manipulation involved purported act of forcing the victim to chant Jai Sri Ram and Vande Maataram. But, in fact, the group was a mix of members from both Hindu and Muslim community and that there was no coercion to chant Jai Sri Ram or Vande Maataram and that the assailants had assaulted the victim as they were unhappy with the amulets distributed by him, claiming that they possessed certain super-natural powers. The doctored video was immediately taken up by some of the accused with the sole intention of spreading communal disharmony and accused Nos. 1, 2, 3, 5, 6 and 7 have re-tweeted knowing fully well that it is a false news. That apart, the tweet by the aforesaid accused, has been re-tweeted by several others also due to which the doctored video and false news has spread on a large scale leading to increasing

religious tension. Despite the clarification issued by the Ghaziabad Police, neither the doctored video nor the tweets have been deleted by the authorities who run and maintain the social medial platform. In fact the complaint against the petitioner's employers as per the complainant is as under:

*"Apart from this, the said video has also been retweeted by many others, due to which the false news has spread on a large scale. It is also worth mentioning that despite the clarification issued by Ghaziabad Police (correct facts) by the accused, their tweets have not been deleted due to which religious tension is increasing further. Additionally, Twitter Inc. and Twitter Communication India Private Limited (TCIPL) also did not take any steps to remove the said tweets. 7- It is also worth mentioning here that according to the press release, people of both communities are involved in the mischievous elements and there is no community angle in the incident.*

4. It is also worth noting the relevant portion, that despite clarification issued by the Ghaziabad Police (correct facts), the tweets have not been deleted due to which religious tension is increasing further. Additionally, Twitter Inc (hereinafter referred to as the 'Company' for the sake of brevity) and Twitter India Communication Private Limited (TCIPL) also did not take any steps to remove the said tweets. On the above allegations it was prayed that case be registered against the petitioner's employer and the company, i.e., Twitter Inc, for the offence punishable under Sections 153, 153-A, 295-A, 505, 120-B, 34 of IPC and the Company and the petitioner's employer were arraigned as accused Nos. 8 and 9.

5. Upon registration of the FIR, notice under Section 160 of Cr.P.C., came to be issued to the petitioner, copy of which is produced as Annexure F and it is dated 17.06.2021. The notice is directed to one Manish Maheshwari, M.D., Twitter India, TCIPL, Mumbai. The

addressee is none other than the petitioner and the notice reads as under:

Notice under Section 160 CRPC PS Loni Border  
District Ghaziabad U.P.

*Manish Maheshwari  
MD, Twitter India  
TCIPL, Mumbai*

*This is to inform the FIR No. 502/2021 under Section 153, 153A, 295A, 505, 120B and 34 IPC has been registered against TCIPL and Twitter Inc. Some people using there twitter handles via TCIPL and Twitter Inc. have spread communal hatred and animosity in their tweets and Twitter has not taken cognizance of the same. it has encouraged the acts and texts which has the propensity to spread enmity amongst religious groups and to disturb the peace and harmony amongst the people of the State and the Country; also allowed such anti-social tweets to become viral continuously. The aforesaid registered crime is being investigated by me wherein it is necessary to record your statement.*

*Therefore, for this purpose, you are required to appear before me within a week of*

*receiving this notice in the PS Loni, Thaziabad, UP.*

*(Emphasis supplied by Court)*

6. In response to the same the petitioner effected a reply by electronic mail on 18.06.2021 which is produced as Annexure G and it reads as under:

*By electronic mail*

*Investigating Officer  
Police Station - Loni Border District Ghaziagad*

***Your reference : Notice dated 17.06.2021 under Section 160 CrPC ("Notice") in relating to F.I.R. No. 502 of 2021***

1. *Twitter Communications India Private Limited (TCIPL) has received your subject Notice via e-mail, which is addressed to me, asking me to appear before you within a week.*

2. *Since the investigation is with respect to the content available on the Twitter Platform, please note that the services on the Twitter Platform are provided in India by Twitter.Inc., a company incorporated in the United States of America. TCIPL does not exercise any control over the services offered on Twitter and has no role in the operation and*

*management of the said platform. Hence, neither TCIPL nor any of its employees, including myself, control any information/data pertaining to any of the users of the services on Twitter.*

*(Emphasis supplied by Court)*

3. *I am an employee of Twitter Communications India Private Limited (TCIPL). I am not acquainted with the facts and circumstances of the case and have no information relevant to this investigation. Therefore I am not the relevant person to provide any details in relation to the subject matter of the case under investigation.*

*4. Despite the above, should you still require my attendance and as I am not a resident within the limits of your police station, I would like to request you to the interview via video conference and I can make myself available over a video conference facility on Monday, 21<sup>st</sup> June at a time of your convenience. The Hon'ble Supreme Court of India in the cases of Vinod Dua V. Union of India & Ors. [Order 14.06.2020 in W.P.Crl. No. 154 of 2020] and Roshni Biswas V. State of West Bengal*

[SLP(Crl.) No. 4937/2020] and the Delhi and Calcutta High Courts in some cases, have allowed use of video conferencing for investigation."

(Emphasis supplied by Court)

7. On the receipt of the reply and on the petitioner failing to appear before the Investigating Officer the impugned notice produced at Annexure A and dated 26.06.2021 came to be issued by the respondent – Police. The notice under Section 41-A reads as under:

"We have received your email dated 18.06.2021. It is clear from your email that you are avoiding to cooperate with the ongoing investigation. The reasons/clarifications given in your reply are not at all justified.

(Emphasis supplied by Court)

As per our information you being the MD of Twitter India, you are a representative of Twitter in India, for this reason you are bound by law to cooperate with the investigation. In order to maintain safety & harmony between the people and the State, also in the larger

*interest, amongst the tweets broadcasted through Twitter in India, you have the power to decide which tweets are to be taken down in relation to India. The impugned malicious tweets published on the Twitter Platform had created a tense atmosphere in the society, gave rise to animosity amongst the different groups, and endangered social harmony. Ghaziabad Police through its official Twitter handle had tweeted that the impugned news is fake and it was within your authority to control spread of this fake news, but you failed in taking steps.*

*By the FIR No. 502/2021 registered in this office, you are directed to personally appear before the Police Station Loni Border on 24.06.2021 at 10.30 AM for recording your statement in this regard. For all purposes, this communication will be considered as a notice under Section 41A CrPC. Your absence will be considered as resistance to the procedure established by law and an attempt to fail the investigation, and further action will be taken accordingly.”*

*(Emphasis supplied by Court)*

8. It is this notice, which is sent by e-mail to the petitioner is now the bone of contention in the instant petition. It is in this background of facts the petitioner is before this Court. Admittedly, there is no prescribed format.

9. The learned counsel for the respondent, at the outset, would protest regarding the maintainability of the writ petition. He would submit that the reason or basis for invoking the provisions of Section 41-A of Cr.P.C. is to be found in unnumbered second paragraph of the notice. It is contended that the petitioner has held himself out to the general public and others, that he is the Managing Director of TCIPL and that the petitioner is a representative of Twitter Inc in India and hence the petitioner is bound in law to cooperate in the investigation. The Ghaziabad Police through their official twitter handle has categorically asserted that the news is a fake news and despite being the chief authority to control the spread of the fake news, the noticee has failed

to take any steps in this regard. It is pertinent to note that the Noticee, apparently is none other than the petitioner, and it is not the corporate entities. The learned counsel for the respondent would submit that the apprehension of the petitioner that he would be arrested is baseless as Section 41-A of Cr.P.C. has been invoked and the said invocation is in such cases where arrest is not contemplated and hence there is no danger and the apprehension about the deprivation of petitioner's liberty is baseless. The petitioner has not disclosed who is actually responsible for the operations and it is for the petitioner to disclose such information. The learned counsel for the respondent would take the Court through Annexure-C (Company Master Data) and would point out that none of the named persons are residents of India and that the petitioner being the Managing Director and in-charge of the affairs of the Company, in terms of Section 305 is required to cooperate with the Police. The Corporate entities do not comply with the IT Rules and they have no responsible head in India. No part of cause

of action arises within the territories of this High Court as the notice addressed to noticee detailed in Annexures-A and F are at New Delhi and Mumbai and on that ground also there is no part of cause of action within the territories of this Court and hence, the writ petition is not maintainable before this Court.

10. The learned counsel for the respondent would further contend that the mere fact of the petitioner's residence is not suffice to confer jurisdiction on this Court and in this regard he places reliance on the ruling reported in (2015) 17 SCC 539 (***State of Maharashtra and another Vs. Sanjay Dalmia and others***). He has placed reliance on the observations made in paragraphs Nos. 2 to 4 of the said judgment. From a reading of the factual aspects of the matter, it is apparent that the appellant State has registered a case of cheating under Sections 420 and 120-B IPC. The appellant Police is situated in Mumbai and the respondent accused had approached the High Court of Delhi. The Apex Court

without entering upon the merits and/or settling the law, has directed the accused therein to join the investigation at Mumbai and was further pleased to direct the transfer off all pending writ petitions (Criminal) from the Delhi High Court to the Bombay High Court.

11. Nextly the learned counsel for the respondent would place reliance on the ruling reported in (1994) 4 SCC 711 (***Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others***), wherein a Three Judge Bench of the Apex Court in the course of interpreting the phrase 'territorial jurisdiction' and 'cause of action', after examining the facts involved in the said case was pleased to hold that the mere fact of the petitioner having its office in a particular city will not confer jurisdiction on the High Court of that State and that in the light of the facts involved there in it was concluded that no cause of action arose within the jurisdiction of High Court of Calcutta and was pleased to hold accordingly. A perusal of the facts would reveal that the writ petition was sought to be

maintained on the ground that the advertisement issued by the appellant was viewed by the writ petitioner in Calcutta. In the instant petition, what is asserted is the breach of a fundamental right, that is, right to liberty.

12. Nextly the learned counsel for the respondent would place reliance on a ruling reported in (2000) 7 SCC 640 (***Navinchandra N. Majithia Vs. State of Maharashtra and others***). The learned counsel would place reliance on the observations made in paragraph Nos. 22 and 43 and would contend that mere place of residence would also not confer the jurisdiction on the High Court of that State and that jurisdiction is conferred only if the cause of action or part of cause of action is arising in that State. That was a case where again the petitioner, resident of Mumbai, a case was registered in Shillong in respect of transaction that had taken in Mumbai and the petitioner was named an accused in the complaint at Shillong. The observations of the Apex Court at paragraph Nos.27, 29, 33, 34 and 37 eloquently deals

with the subject matter. The observations in paragraph Nos. 41 and 42 also leave no doubt with regard to the direction the Hon'ble Apex Court desired to give to Clause (2) of Article 226 of the Constitution of India. Even more telling is the concluding paragraph No.43. It is relevant to note here that there is no allegation of wrong-doing against the petitioner in the compliant.

13. Nextly, the learned counsel for the respondent would place reliance on a decision reported in (2020) 10 SCC 766 (***Shanta Devi alias Shanti Mishra Vs. Union of India and others***) by a Three Judge Bench, wherein their lordships have interpreted the phrase 'cause of action' in reference to the territorial jurisdiction of a High Court and have reiterated that if part of cause of action arises within the territorial jurisdiction of the High Court, the said High Court will be vested with the jurisdiction to entertain the petition. It is pertinent to note that the above case arises out of an alleged violation of service conditions and stoppage of pensionary benefits. Reliance

is placed on paragraph No. 8 wherein the Apex Court while interpreting the words "cause of action" with reference to Article 226 (2) of the Constitution, has been pleased to hold that the said issue would depend upon the nature of the impugned order and as to whether it would give rise to a cause of action or not depends on the facts of the said case. But, in a different set of facts, the Apex Court was pleased to hold that mere service of notice on the respondent therein at its registered office at Calcutta would not give rise to cause of action. Reliance is placed on this ruling to contend that mere receipt of notice by the petitioner would not constitute a cause of action thereby enabling the petitioner to approach this Court.

14. Further, reliance is placed on orders passed in CRWP No. 6427/20 (O & M) in the case of **Lawrence Bishnoi Vs. State of Haryana** and reliance is placed on paragraph Nos. 7 and 4. It is a case where the facts involved and the reliefs sought therein have no bearing

on the instant case. The petition was by a person, who was lawfully deprived of his liberty.

15. Nextly, the learned counsel for the respondent placing reliance on Section 2(e) read with Section 177 of Cr.P.C. would contend that under the provisions of Section 482 of Cr.P.C, inherent power vests with the High Court and the High Court is the one as defined under Section 2(e) of Cr.P.C. and would contend that the petition is liable to be rejected as not being maintainable and the High Court, in the instant case, would be the High Court in Uttar Pradesh.

16. In reply, learned Senior counsel Sri. C.V. Nagesh would submit that the plea and the fact that the petitioner is resident of Bengaluru is not denied. The fact that the establishment of accused No. 9 i.e., the employer of the petitioner being situated in Bengaluru and the petitioner being employed in the Accused's office in Bengaluru is also not disputed. The learned Senior counsel would invite the attention of the Court to the FIR

and more particularly to the last column relating to the address of the accused and would submit that no address of the accused named therein is detailed.

17. He would submit that in contradiction of the same, the address of the 9<sup>th</sup> accused, named as TCIPL, the employer of the petitioner, is detailed in Annexure-C as having its registered office at Mumbai and a place of business at Bengaluru. He would submit that the petitioner has also placed on record his Adhaar Card, which clearly demonstrates the place of his residence. Elaborating further, he would submit that a bare perusal of Annexure-C would reveal, who are the relevant persons and would reiterate that the petitioner is only an employee. He would further submit that not only the summon under Section 41A of Cr.P.C. has been received at Bengaluru, even the earlier Notice issued to the petitioner by way of electronic mail invoking Section 160 of Cr.P.C. was served at Bengaluru only and in that view of the matter, he would submit that this Court has

jurisdiction to entertain and consider the petition. He would further submit that the FIR does not name the petitioner nor does the complaint to do so. Inviting the attention of the Court to Annexure-F, he would submit that the petitioner is neither living nor working in Mumbai and the Notice being addressed to Mumbai and Delhi is mischievous.

18. He would contend that the impugned Notice under Section 41A of Cr.P.C. is vitiated by malafides as it is only a retaliatory measure. That the provisions of Section 41A of Cr.P.C. have been invoked as the petitioner failed to comply with the earlier demand made by the respondent – police, invoking Section 160 of Cr.P.C. He would submit that initially on 17.06.2021, the Notice under Section 160 Cr.P.C. came to be served on the petitioner by electronic mail. Learned Senior counsel would take the Court thorough the contents of the Notice, which has been reproduced supra.

19. Learned Senior counsel would contend that in sum and substance, the allegation is that M/s. TCIPL and Twitter Inc., entities registered in India and USA respectively, have been permitting some people to use the twitter handle via TCIPL and Twitter Inc. to spread communal hatred and animosity by permitting transmission and retransmission of the alleged doctored video and false news thereby aiding the spread of enmity among religious groups and that the accused have permitted anti-social elements to tweet and re-tweet and thereby become viral and that the crime is being investigated by the signatory and that it is necessary to record petitioner's statement and accordingly, he was ordered to appear within a week of receiving the Notice by the Loni Border Police Station, Ghaziabad, Uttar Pradesh. The petitioner, by reply mail dated 18.06.2021, refuted the allegations that he is in-charge of Twitter Inc., USA and that it is not within his authority or within his means to controls the content of the social media platform and thereby proclaimed his innocence with

regard to the operations and control over the contents on the platform and basically conveyed his inability or lack of any official authority to exercise control over the contents in the platform.

20. The statement effected by the petitioner in sum and substance is that the services on the Twitter platform are provided by Twitter Inc., a company incorporated in USA. That TCIPL does not exercise any control over the services offered by the Twitter Inc., USA and it has no role in the operations and management of the said platform. That neither TCIPL nor its employees, including the petitioner, exercise control over any information or data pertaining to any of the users of the services of Twitter. That he is an employee of TCIPL i.e., only an employee of TCIPL and that he is not acquainted with the facts and circumstances of the case and that he possesses no information that could be relevant for the purpose of investigation and that he is not a person, who can provide details sought in relation to the commission

of the offence. That he being a resident outside the limits of the police station, in the event, the signatory i.e., investigating officer, desires to record his statement, it may be facilitated by video conferencing and in this regard, he would place reliance on the ruling of the Hon'ble Apex Court in the case of **Vinod Dua vs. UOI and Others** reported in **2021 SCC Online SC 414** and **Roshni Biswas vs. State of West Bengal and Another** reported in **2020 SCC Online SC 881**. Within a few days thereafter, the respondent - Police invoked the provisions of Section 41A of Cr.P.C., resulting in the impugned Notice. The contents of the said Notice have also been extracted supra for the sake of brevity and convenience.

21. The respondent - Police acknowledge the receipt of reply by e-mail dated 18.06.2021 produced as Annexure-G. The first unnumbered paragraph acknowledges the receipt of the reply made. It also reflects the conclusion drawn by the signatory that the

petitioner is avoiding cooperation with the on-going investigation. That the reasons/clarifications set-out in the reply are not justified and the second unnumbered paragraph gives the reasons why the investigating officer deems it necessary to summon the petitioner and the reason is that as per their information, the petitioner is the Managing Director of Twitter India and a representative of Twitter in India (emphasis supplied) and on account of his dual capacity, he is by law bound to co-operate with the investigation. That the malicious tweet and video published on the Twitter platform created tense atmosphere in the Society and gave rise to animosity amongst different groups and endangered social harmony. That the respondent - police through its official Twitter handle had tweeted that the impugned news is fake. Despite the clarification and though it was within the authority of the petitioner, to quote the words of the respondents, "*it was within your authority to control spread of this fake news, but you failed in taking any steps.*" Thus, in sum and substance, the allegation is

that it was within the power and authority of the petitioner to have stopped the spread of fake news and circulation of doctored video and despite having authority, the petitioner failed. Further, in the concluding paragraph of the Notice, it is directed that the petitioner shall keep himself present on 24.06.2021 at 10.30 a.m. to record his statement. It is further stated that for all purposes, the communication (impugned notice) will be considered as Notice under Section 41A of Cr.P.C. It is further stated that his absence would be considered as resistance to the procedure established by law and an attempt to fail the investigation and further action would be taken accordingly. The use of the words "impugned malicious tweets" is not without significance.

22. Learned Senior counsel would take the Court through Section 160 of Cr.P.C and contend that the said Notice was one without jurisdiction and contrary to the mandate of law. He would submit that from a reading of Section 160 of Cr.P.C., it is apparent that the person

living beyond the territorial jurisdiction of the authority or the limits of the adjoining police station cannot be summoned and the mandate of law requires the investigating authority to visit the person, who is not an accused for the purpose of recording statement. That Notice under Section 160 of Cr.P.C. being without the sanction of law, no duty was cast upon the petitioner. Despite that, the petitioner addressed a reply setting-out the facts and further also conveyed his willingness to co-operate with the investigation. He would submit that it was never the stand of the petitioner that he would not make himself available to the investigators. On the contrary, he has categorically assured to participate and record his statement by virtual mode. Despite the same, no efforts were made to examine and record the statement of the petitioner. He would contend that it is not the case of the respondent that they have progressed with the investigation or that the progress in the investigation has been stalled on account of the petitioner. Learned Senior counsel would draw the

attention of the Court to the concluding paragraph of the Notice and would submit that the very language employed in the Notice makes it clear that they want to lay their hands upon the petitioner i.e., arrest him, and that if the respondent were to state that they will not arrest the petitioner, the petitioner is willing to appear before the investigating authority. Learned Senior counsel would contend that a bare reading of the provisions of Section 41A of Cr.P.C., would demonstrate that the provisions can be invoked against a distinct class of persons only and not against all and sundry much less against the petitioner.

23. Learned Senior counsel would lay emphasis on the language deployed therein, more particularly, to contend that the person against whom a Section 41A Notice is directed must be a person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence. He

would submit that sub-section (1) of Section 41A of Cr.P.C. is not a guarantee against the arrest of the petitioner and that sub-section (3) of Section 41A of Cr.P.C. empowers the police officer to arrest such a person, albeit for reasons to be recorded i.e., if the police officer is of the opinion that he ought to be arrested and hence, he would submit that sub-section (1) of Section 41A of Cr.P.C. is not a safeguard to the petitioner against arrest. He would submit that the Notice and proceedings are motivated and it is the object of the respondent - police to put him behind bars as they have a axe to grind against Twitter Inc., USA. He would contend that so long as there is no compliance with the mandate or prescription as provided under sub-section (1) of Section 41A of Cr.P.C., no authority is vested in the respondent to invoke the provisions. He would submit that neither the statement of the respondent nor the materials placed before the Court demonstrate compliance with any of the criterion prescribed in sub-section (1) of Section 41A of Cr.P.C. If that be the admitted position, learned Senior

counsel would submit that the impugned Notice has to be construed as one without jurisdiction or one without the sanction of law and that if the impugned Notice is construed to be as one without the sanction of law and is one which enables the respondent to take coercive action and if such action curtails the fundamental right of the petitioner, then it certainly creates a cause of action within the territorial jurisdiction of this Court.

24. He would submit that the contention that the petitioner is answerable in view of the mandate of Section 305 of Cr.P.C. is without substance. He would contend that Section 305 of Cr.P.C does not empower the police to nominate a representative of a Company nor does it enable the police to place reliance on the said provision at the stage of investigation and that Section 305 of Cr.P.C comes into play only at the state of inquiry or trial. He would submit that the concept of inquiry or trial has been gone into by the Hon'ble Apex Court in the case of ***Hardeep Singh vs. State of Punjab and***

**Others** reported in **2014 (3) SCC 92** and would submit neither is the stage in the case on hand. He would contend that once the impugned proceedings are held to be without the sanction of law, the same is a proceeding without jurisdiction and would warrant interference. He would submit that the very assertions of the respondent in the Notice under Section 41A of Cr.P.C and its contents are suffice to demonstrate the malicious intent of the respondent. He would submit that the assertion by the learned counsel for the respondent, that there is no real threat of arrest is totally false. He would submit that if the purpose of summoning the petitioner or putting the petitioner on notice is to reveal the name of the concerned persons then, the names of persons concerned is very much available with the Registrar of Companies, who have in fact issued the Company Master Data Extract, which is produced as Annexure – C. That the crime is not registered under the Information Technology Act and is registered only for the offence under the Indian Penal Code. Learned Senior counsel would take

this Court through the User Agreement of the 8<sup>th</sup> accused, which is produced as Annexure-E, to contend that the Company is an independent entity, established and incorporated in United States of America and in particular, he would invite the attention of the Court to the last unnumbered paragraph in running page No.39, which reads as under:-

*"These terms are an agreement between you and Twitter Inc., 1355 Market Street Suite 900, San Francisco, CA 94103 U.S.A. If you have any questions about these Terms, please contact us."*

*Effective: June, 18, 2020."*

25. He would contend that a reading of Annexure-E would by itself demonstrate that the social media platform is run and maintained by the 8<sup>th</sup> accused and that it is an independent entity having its registered office in the United States of America. That the employer of the petitioner, who is arrayed as 9<sup>th</sup> accused, *prima facie*, has no role nor has the authority attributed, in particular, a role which either the petitioner or the

employer - 9<sup>th</sup> accused can perform, that is, to control the contents of the platform. He would submit that the petitioner cannot and does not have any complaint or cause against the registration of the FIR as the petitioner is neither an accused nor is he nominated by the Company to defend the interest of 9<sup>th</sup> accused. Learned Senior counsel would contend that the petitioner is a third party and so long there is no complaint made against the petitioner or so long as it is not a case of receipt of any credible information of the involvement of the petitioner or the existence of a suspicion based on reasonable grounds that the petitioner has committed a cognizable offence, the question of invoking Section 41A of Cr.P.C to summon the petitioner to join the investigation would not arise. It is further elaborated that the allegation is against the employer of the petitioner, who has office in Bengaluru and the allegation is that the employer has omitted to carryout its duty of deleting the tweet and the petitioner being in the employment of 9<sup>th</sup> accused in Bengaluru and also being a resident and not

being an accused, the petition is maintainable before this Court and this Court is fully empowered to consider and dispose of the petition.

26. Learned Senior counsel would also place reliance on Rule 39 of the Writ Proceedings Rules, 1977, to contend that the provisions of the Code of Civil Procedure, 1973, are applicable as far as may be. In that view of the matter, Section 20 of Code of Civil Procedure, 1908, which deals with cause of action is also invokable. Rule 39 of the Writ Proceedings Rules, 1977, reads as under:-

*"39. Application of the High Court of Karnataka Rules, etc.-The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the Code of Civil Procedure, 1908, shall apply, as far as may be, to proceedings under 1[Article 226 and/or Article 227]1 and writ appeals in respect of matters for which no specific provision is made in these rules."*

27. Learned Senior counsel would submit that the impugned Notice being one without jurisdiction, the same

can be gone into and considered even in collateral proceedings. Accordingly, prays to set-aside the same.

28. Per contra, learned counsel for the respondent would submit that the petitioner has canvassed three grounds in support of their contention that the writ petition is maintainable before this Court. He would contend that reliance on the fact of the petitioner being resident or the company being based in Bengaluru or he being employed in Bengaluru and the fact that the Notice is received in Bengaluru is immaterial. Interjecting the learned Senior counsel for the petitioner would invite the attention of the Court to the ruling of the Hon'ble Apex Court in the case of **Cement Workers' Mandal vs. Golobal Cements Limited (HMP Cements Limited) and Others**, reported in **2019 (20) SCC 517** and in particular, would place reliance on the observations at paragraph Nos.20 to 24.

29. In response, learned counsel for the respondent would place reliance on the observations in

paragraph No.27 and contend that the Hon'ble Apex Court has categorically held that Clause (2) of Article 226 of the Constitution of India can be equated with or read in context with Section 20(c) of Code of Civil Procedure only and in that view of the matter, he would submit that the writ petition requires to be rejected as not being maintainable.

30. Placing reliance on the observations made in paragraph Nos.20 to 24, learned Senior counsel would contend that the petitioner is espousing his fundamental rights and the petitioner is not impugning the FIR and the investigation cannot be used as a tool to harass the petitioner. In reply, learned Senior counsel would place further reliance on the ruling rendered in the case of ***Nawal Kishore Sharma vs. Union of India and Others*** reported in **(2014) 9 SCC 329** and in particular, would invite the attention of the Court to observations in paragraph Nos.9, 14, 15, 16, 18 and 19.

31. Per contra, learned counsel for the respondent would invite the attention of the Court to paragraph No.13 and would in particular place reliance on the observations made therein to submit that the facts pleaded ought to have a nexus or relevance with the *litis* involved in the case and would submit that it is not that every and other fact, which has relevance or nexus with the *litis* involved that could be considered for the purposes of conferring the territorial jurisdiction of the Court and would rest his case.

32. In reply, Learned Senior counsel would take the Court further to the observations of the Hon'ble Apex Court in the case of ***Roshni Biswas vs. State of West Bengal and Another*** reported in ***2020 SCC Online Sc 881*** and ***Vinod Dua vs. Union of India and Others*** reported in ***2021 SCC Online SC 414.***

33. Learned Senior counsel would take this Court through paragraph Nos.6, 8, 9 and 11 of *Roshni Biswas's* case, which read as under:-

"6. Mr. Mahesh Jethmalani, learned senior counsel appearing on behalf of the petitioner submits that the petitioner has stated on oath that she disclaims any association with the Facebook post and that she does not operate the web page which forms the subject matter of the FIR. That apart, it has been submitted that the petitioner is willing to cooperate with the Investigating Officer to establish that she has no connection with the post whatsoever. However, it has been submitted that the condition precedent for the exercise of the power under Section 41A has not been met in the present case because neither is there a reasonable complaint nor credible information or, for that matter, a reasonable suspicion that the petitioner has committed a cognizable offence.

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8. There can be no gainsaying the fact that the court in the exercise of judicial review does not interfere with the conduct of investigation under and in accordance with the provisions of the Code of Criminal Procedure 1973. The issue, however, is whether in the facts which we have narrated above, it would constitute a reasonable exercise of power within the meaning of Section 41A for the Investigating Officer to compel the petitioner to attend to the Ballygunge Police Station, in the face of a post suggesting that the lock down restrictions have not been appropriately implemented by the State of West Bengal in a particular area. Cognizant as the Court is of the underlying principles which restrain the exercise of judicial review in the matter of police investigation, equally, the court must safeguard the

*fundamental right to the freedom of expression under Article 19(1)(a) of the Constitution. There is a need to ensure that the power under section 41A is not used to intimidate, threaten and harass.*

*9. We should not, at this stage, be construed to have expressed a view on the merits of the petition for quashing which is pending before the Calcutta High Court under Section 482 of the Code of Criminal Procedure 1973. The mere filing of a petition to quash an FIR under Section 482 is not sufficient in and of itself to obviate compliance with a summons under Section 41A. We are, however, of the considered view that to require the petitioner at this stage to comply with the summons under Section 41A during the pendency of the proceedings before the High Court would not be justified in the facts as they have emerged in this case. Hence we grant an ad-interim stay against the implementation of the direction of the High Court requiring the petitioner to appear before the Investigating Officer at Ballygunge Police Station. This is subject to the condition that the petitioner undertakes to respond to any queries that may be addressed to her by the Investigating Officer and, if so required, attend to those queries on the video conferencing platform with sufficient notice of twenty-four hours. Mr. Jethmalani, learned senior counsel appearing on behalf of the petitioner states that the petitioner would cooperate in all respects though after the order of 5 June 2020, no query was addressed to the petitioner, despite five months having elapsed since then. Mr. R. Basant, learned senior counsel submits that liberty may be granted to the Investigating Officer, if so required, to*

*come to Delhi for the purpose of eliciting specific responses by way of clarification from the petitioner in regard to the alleged Facebook posts. Mr. Jethmalani states that there is no objection to the Investigating Officer doing so with twenty-four hours' notice. We accede to the request of Mr. Basant.*

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*11. The direction contained in the impugned order of the High Court requiring the petitioner to attend at the Ballygunge Police Station shall accordingly remain stayed pending further orders. The High Court may dispose of the petition under Section 482 uninfluenced by the pendency of these proceedings and nothing contain in the present order shall amount to an expression of opinion on the merits of the rival contentions in the pending petition under Section 482."*

34. Learned Senior counsel would contend that the Notice under Section 41A of Cr.P.C. being in complete violation of the mandate of the statute could result in the deprivation of the person's liberty and consequently impact the fundamental rights of the petitioner and as held by the Hon'ble Apex Court, it is the duty of every Court to ensure and protect fundamental

rights guaranteed to the citizens under the Constitution of India.

35. Having given my anxious consideration to the contentions advanced and the materials placed before this Court, the Court formulates the following points for consideration.

- i) Whether the writ petition is maintainable ?*
- ii) Whether this Court has jurisdiction to entertain the writ petition and quash the impugned Notice issued by respondent – Police in exercise of powers under Section 41A of Cr.P.C?*
- iii) What order?*

36. The facts are not in dispute. A plain reading of the FIR produced as Annexure – B would not leave much to imagination. The FIR can be read in two parts. Primarily, the complaint being against the commission by certain individuals, whose act it is alleged, has the tendency of inciting tension and hatred among two communities and which incitement can result in violence

and disturbance of law and order. The first part is directed against seven named individuals and entities. The second part of the complaint relates to omission or in-action on the part of 8<sup>th</sup> and 9<sup>th</sup> accused, who it is alleged, have failed to take note of the clarification issued by the respondent – Police and have permitted the continuation of the transmission and retransmission of the alleged doctored video and false news in the form of tweets.

37. It is not in dispute that the petitioner is not named as an accused. Neither the complaint nor the FIR would indicate any complaint or allegation as against the instant petitioner. It is proclaimed by the petitioner that he is an employee, employed in the services of 9<sup>th</sup> accused. The proclamation is neither denied nor dented by the respondent – Police. On the other hand, the very notice, *prima facie* demonstrates the acknowledgment of this fact by the respondent – Police. The initial Notice under Section 160 of Cr.P.C. would describe the

petitioner as Managing Director of 9<sup>th</sup> accused and working out of Mumbai. The sum and substance of the Notice is nothing but a reproduction of the complaint i.e., some people have used their twitter handle via TCIPL and Twitter Inc. to spread communal hatred and animosity with their tweets and Twitter has not taken cognizance of the same (*emphasis supplied*). It is relevant to note that Twitter Inc. is arrayed as 8<sup>th</sup> accused. If that be so, then the only inescapable inference that can be drawn is that, the investigating officer was fully aware that both the corporate entities are independent entities.

38. From a reading of the Notice, it can be inferred that the signatory i.e., investigating officer was or is conscious that it is Twitter Inc. or accused No.8, who can or who could have controlled or regulated the presence or continuation of the video or the tweets on the platform. Notice would also clearly establish that the investigating officer is conscious of the distinction between Twitter India and Twitter Inc., which runs the

platform. It is also pertinent to note that the Notice is issued under Section 160 of Cr.P.C. Assuming that the petitioner could contribute, clarify or enlighten the investigating authority with regard to certain aspects of the crime, which he desires to investigate and admittedly the avowed purpose of the Notice is to clarify as to why the platform has not deleted the offensive video or offensive tweet or why it has not prevented re-tweets.

39. Then, it is beyond the realms of imagination, as to how the petitioner, who has proclaimed that he has no control over the operations of 8<sup>th</sup> accused, be summoned under Section 41A of Cr.P.C in the absence of any inculpatory or indictive or incriminating material. Thus, it can be assumed that the scope of investigation was made known to the petitioner. The petitioner in his understanding, deemed it fit to reply to the same electronically, since the Notice was also received by him electronically at Bengaluru though it is addressed to TCIPL, Mumbai. By his reply, the petitioner has clarified

the distinction between Twitter Inc. and Twitter India and in paragraph No.2, it is categorically asserted by the petitioner that the platform is run by Twitter Inc., a company incorporated in USA. That TCIPL, including himself, have no role much less, any control, in the management of the said platform. That neither Twitter India nor he, are in a position to provide any information/data pertaining to the users or the said service and that in paragraph No.3, he would submit that he not being acquainted with the facts and circumstances of the case, he would not be of much assistance to the investigating officer and that despite the clarification if the investigating officer desires, he is willing to come live and record his statement virtually.

40. The singular fact that emerges from a reading of Notice under Section 160 of Cr.P.C. is the awareness of the investigating officer with regard to the distinction between Twitter Inc. and Twitter India. That Twitter Inc., is one which is responsible for the control and operation

of the social media platform on which the alleged offensive video and messages were found. Further, Annexures F and G i.e., Notice and reply, amplifies the fact that whatever residuary doubts the investigating officer entertained were further clarified by the petitioner through reply by e-mail, which also categorically amplifies the distinction between TCIPL and Twitter Inc. and the petitioner has categorically asserted that neither his employer i.e., 9<sup>th</sup> accused nor he have nor can exercise any control over the social media platform, which is in the exclusive domain of 8<sup>th</sup> accused i.e., Twitter Inc., USA. These aspects are dealt upon in little detail, in view of the fact that no arguments have been addressed by the respondent on the merits of these contentions and the objections and the arguments canvassed have centered around the objections to the jurisdiction of this Court to entertain the petition.

41. From the short narration above, what emerges is that, the petitioner is not arrayed as an accused nor is

it the case of the respondent that there is credible information received by them with regard to his involvement or that the respondent entertains a suspicion, which is based on reasonable grounds that he has committed any cognizable offence. In the absence of any of these three ingredients, the moot question that arises, is as to whether the respondent could have invoked Section 41A of Cr.P.C. at all? If the law mandates that the act be performed in a particular manner or if the law mandates that the vesting of right is contingent upon certain condition precedent or only in particular circumstances, it is needless to state that the act can be performed only in that manner or the right can be invoked only on compliance of the mandate. In the absence of the pre-conditions being made out, then the authority would necessarily be divested of the power to invoke the statutory provisions. In the instant case, in fact in the course of arguments, the respondent has made a categorical statement that the petitioner is being summoned not in his individual capacity but as a

representative of the Company. It was also submitted that the purpose for which the petitioner has been summoned has also been made known and that as the reply has not satisfied or clarified the doubts entertained, the respondent deemed it necessary to invoke the provisions of Section 41A of Cr.P.C. On a reading of Annexure - A, the impugned Notice, the only ground which is made the basis for invoking Section 41A of Cr.P.C. is that as per the information of the respondent, the petitioner is the Managing Director of Twitter India and that he is a representative of Twitter in India and hence, for the said reason, the petitioner is bound by law to co-operate with the investigation. That Twitter India has the power to decide, which tweets are to be taken out of circulation in relation to India and despite knowing that the impugned news is fake news and despite it being within the authority and control to stop the spread of fake news, steps have not been taken by the petitioner.

42. Thus, the crux appears to be the belief of the respondent, that 9<sup>th</sup> accused and the petitioner are competent/capable of regulating the contents on the social media platform. This case appears to be an improved version, as it is contrary to the version of the investigating officer as stated in the Notice under Section 160 of Cr.P.C., wherein, it has been stated that Twitter has failed to control the spread of the fake news. It is pertinent to note that the improvement is not backed by any material that is before this Court.

43. Thus, this Court is required to examine as to whether any of the condition precedent, stipulated under Section 41A of Cr.P.C. are complied with or in other words, the case of the petitioner falls in one of the three distinct classes detailed therein. It is the specific case of the petitioner that he is neither named as an accused nor has any material been placed before the Court to demonstrate that the respondent entertain a reasonable suspicion or that they are in receipt of credible

information. In the absence of any of these three pre-conditions having not been met with, it is to be construed that the Notice is without the sanction of law and consequently without jurisdiction and that as the provision vests the authority in the investigating officer to invoke the provisions of Section only in case where either of the three pre-conditions are met with, it cannot be laconically argued that the petition is not maintainable.

44. It cannot be gainfully contended that the provisions of Section 41A of Cr.P.C can be invoked in any or every situation. The mandatory nature of the provisions of Section 41A of Cr.P.C is reflected by the very provisions of Section 160 of Cr.P.C. in the statute book. If it was the idea or intention of the law makers to enable the investigating officer to seek the presence of any or every person for the purpose of investigation, the provisions of Section 160 of Cr.P.C. would have sufficed and there was no need for the law makers to frame a

special provision insofar as it relates to summoning a person to join the investigation as an accused. The clarification or rather submission that the petitioner has not been notified as an individual but as a representative would again clearly demonstrate that, if it was the intention of the investigating officer to summon the accused or seek co-operation from the accused, notices ought to have been addressed to the accused. On the other hand, the Noticee is the petitioner and he has been notified by name, though the designation is also detailed in the Notices. That apart, the very submission that the petitioner has been notified as a representative of the accused - Company, would have demanded something more to be placed before the Court, more so in the light of the categorical assertions by the petitioner under Annexure-G, wherein he has stated in categorical terms that he has no role or control over the media platform run by 8<sup>th</sup> accused. Despite his categorical assertions, the respondent - police has just brushed it aside and under the impugned Notice, it is stated '*as per our information*',

the petitioner is the Managing Director of Twitter India and a representative of Twitter Inc. in India. It needs no reiteration that a mere information can never partake the character of a or be equated with a "credible information" as mandated as under Section 41A of Cr.P.C. Along with the petition, the petitioner has also placed on record the Company Master Data and today, along with a memo, a copy of Form No. MGT-7, the Annual Return submitted by the TCIPL, which demonstrates the share holding pattern in TCIPL. The very approach of the respondent that is, to not even resort to a preliminary investigation, to secure records, which are available in the public domain, is surprising and forces the Court to infer otherwise. It is not merely the failure to obtain information, which is available in the public domain and very much with the statutory authorities but the ominous silence maintained with regard to the merits of the matter and an attempt to coax the Court to reject the petition on the singular ground of jurisdiction. No doubt the parties are entitled to agitate on the grounds of

territorial jurisdiction alone but the said issue by itself, even as per the rulings placed before this Court on both sides, is a question of applying the facts in the context of the *lais* involved and the rights agitated by the parties and the relief sought.

45. It is not in doubt that the very impugned notice itself threatens the petitioner with punitive action and deprivation of liberty, which admittedly is a fundamental right. Hence, if the rights of the petitioner is viewed in the above background, it can be safely held that the contention of the respondent is misplaced.

46. In the light of the above discussion, with regard to the authority of the respondent to invoke Section 41A of Cr.P.C., it has been demonstrated in unmistakable terms that the petitioner, who is not an accused and there being no compliance with the condition precedents imposed under Section 41A of Cr.P.C., it can by no stretch of imagination be described as a reasonable exercise of power and thereby rendering

it a colorable exercise. In that view of the matter, it can be held that the invocation of power under Section 41A of Cr.P.C. is without jurisdiction. Though a long list of rulings are relied upon, the rulings involves persons, who have either been arrayed as accused or the petition involves */is* in a civil domain. In view of the above, it has to be concluded that the impugned Annexure-A Notice is vitiated and can be the premise for the petitioner to reasonably apprehend breach of his constitutionally guaranteed fundamental rights.

47. Be that as it may. In the case of ***Navinchandra N. Majithia vs. State of Maharashtra*** reported in **(2000) 7 SCC 640** and ***Nawal Kishore Sharma vs. Union of India*** reported in **(2014) 9 SCC 329**, it has been categorically held by the Hon'ble Apex Court that a part cause of action would give rise or confer jurisdiction on the High Court within which the cause of action arises.

48. Admittedly, in the instant case, the petitioner is not arrayed as an accused. The material placed by the petitioner and which remains uncontraverted and which material is part of the records maintained by the statutory authority and available in the public domain, demonstrates that the entity Twitter India, is an independent entity and the control over the affairs of the company is in the hands of one Twitter International Company, Ireland and Twitter Netherlands B.V., situated in Netherlands. A bare perusal of the Annual Returns submitted by TCIPL reveals the description of business activity as advertising and market research. *Prima facie*, this only further aids the case canvassed by the petitioner that Twitter India has no control or authority over the contents of the social media platform, which even as per Annexure-F is operated and controlled by 8<sup>th</sup> accused i.e., Twitter Inc. USA. The action of respondent in trying to invoke Section 41A of Cr.P.C., leads to an inevitable conclusion that the same is resorted to as an arm-twisting method, as the petitioner refused to heed to

the command of the Notice under Section 160 of Cr.P.C. and the respondent probably inferred it as a audacious act i.e., refusal to bow to its command. The failure to comply with the command of the respondent under Section 41A of Cr.P.C.,would necessarily result in punitive action, which could result in the depriving the petitioner of his liberty. That apart, complying with the command of the respondent would also involve the petitioner curtailing his day-to-day activities in practicing of his profession compelling him to abandon the same and travel to far away to Ghaziabad. It is not that the respondent is deprived of any means to collect the information from the petitioner. In fact, as pointed out, the information or the clarification sought, are clarifications that could have been easily accessed by the investigating officer from the statutory authorities themselves. Annexure – C being the Company Master Data maintained by the authorities clearly reveals as to who are the persons, who are responsible for the management of the Company. The mere fact that they

are non-residents, does not tie-down the hands of the respondent. The said fact can also not be made a basis to treat the petitioner as a sacrificial goat at the altar of convenience. The Annual Returns, which was filed into the Court is yet again a document, which is available in the public domain and issued by the statutory authority, which details the nature and conduct of business by the 9<sup>th</sup> accused. It also details the shareholders and none of the information, either Annexure - C or Annual Returns can be considered as even *prima facie* incriminating or indicting or indicating the petitioner as capable of controlling the contents of the social media platform run by 8<sup>th</sup> accused. The provisions of a statute cannot be permitted to become tools of harassment. Hearing has been conducted for the past several dates. The respondent has not even placed an iota of material, which would indicate otherwise, or which would demonstrate a *prima facie* involvement of the petitioner. In that view of the matter, this Court is of the considered opinion that the petitioner has made out a case.

49. It is relevant and pertinent to note and reproduce certain observations of the Hon'ble Apex Court in various rulings relied upon by the parties. The observations throw light on the issue raised in the petition.

The Hon'ble Apex Court in the case of ***Om Prakash Srivastava Vs. Union of India and Another***, reported in **(2006) 6 SCC 207**, has been pleased to observe in paragraphs 7, 8 and 14, as under:-

*"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.*

*8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.*

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*14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4<sup>th</sup> Edn.) the meaning attributed to the phrase "cause of*

*action” in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See *Navinchandra N. Majithia v. State of Maharashtra*).*

The Hon’ble Apex Court in the case of ***Oil and Natural Gas Commission Vs. Utpal Kumar Basu & Others***, reported in **(1994) 4 SCC 711**, has been pleased to observe in paragraphs 5 and 6, as under:-

*"5. Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the*

*Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.*

6. *It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh, Lord Watson said:*

*"... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."*

*Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”*

The Hon'ble Apex Court in the case of

***Navinchandra N. Majithia Vs. State of Maharashtra and Others,*** reported in **(2000) 7 SCC 640**, has been pleased to observe in paragraph 43 as under:-

*"43. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case."*

The Hon'ble Apex Court in ***Jagisha Arora Vs. State of Uttar Pradesh and Another,*** reported in **(2019) 6 SCC 619**, has been pleased to observe in paragraph 2 as under:-

*"2. The fundamental rights guaranteed under the Constitution of India and in particular Articles 19 and 21 of the Constitution of India are non-negotiable."*

50. Thus, from the above, it can be gathered that it is the duty of the Constitutional Courts to act and protect against any assault on the fundamental right of a citizen and the Constitutional Courts cannot be shackled in the light of Article 226 (2) of the Constitution of India. In the light of the above rulings and in the facts and circumstances of this case, it is held that the writ petition by the petitioner, who is not an accused and his liberties not being governed by the Code of Criminal Procedure and in the light of the fact that issuance of Section 41A of Cr.P.C Notice being vitiated by malafides and being one without jurisdiction, the writ petition is held to be maintainable. The points for consideration are answered accordingly.

51. Accordingly, the Notice dated 21.06.2021 produced as Annexure-A to the writ petition is quashed. Annexure-A Notice shall be read as a Notice under Section 160 of Cr.P.C.

In the event, the investigating officer desires to secure the statement or such information, it is open for the respondent to either require the petitioner to interact on virtual mode or to meet the petitioner either at his residence or at the office address as detailed in Annexure-C.

The writ petition stands ordered accordingly. No costs.

**Sd/-  
JUDGE**

LRS/dn/-