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Neutral Citation No. - 2024:AHC-LKO:21415

Court No. - 15

Case :- APPLICATION U/S 482 No. - 1604 of 2024
Applicant :- Brij Bhushan Sharan Singh
Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), Lucknow And Another
Counsel for Applicant :- Sachin Upadhyay,Amandeep Singh,Shivendra S Singh Rathore,Tajdar Ahmad
Counsel for Opposite Party :- G.A.,Arvind Kumar Tewari,Ashish Kumar Mishra,Gaurav Tewari,Pramod Kumar Shukla

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Purnendu Chakraborty assisted by Shri Shivendra Shivam Singh Rathore and Shri Sachin Upadhyay, learned counsels for the applicant, Shri Rajesh Kumar Singh, learned A.G.A.-I for the State as well as Shri Pramod Kumar Shukla, learned counsel for the informant/ complainant and perused the record.

2. This application has been filed under Section 482 Cr.P.C. by the applicant- ***Brij Bhushan Sharan Singh*** for quashing of the order dated 10.01.2024, passed by the learned Additional Chief Judicial Magistrate-III (MP/ MLA), Lucknow in Complaint Case No. 80654/ 2023 (Dr. Mohd. Kamran Vs. Brij Bhushan Sharan Singh), whereby the applicant has been summoned to face trial U/S 500 I.P.C.

3. Learned counsel for the applicant submits that the trial Court has passed the impugned order without application of mind and simply on the basis of recording of the statement of the complainant under Section 200 Cr.P.C. and of his witnesses recorded under Section 202 Cr.P.C., the applicant/ accused person has been summoned to face trial for committing offence under Section 500 I.P.C.

4. It is vehemently submitted that while summoning an accused person to face trial under Section 204 Cr.P.C., the trial Court was obliged to record sufficient grounds for proceeding further and the impugned order passed by the trial Court has been passed so carelessly that the trial Court has failed to record any reasons, which may even remotely describe the sufficiency of grounds.

5. It is further submitted the trial Court has also not considered the amended provision of Section 202 Cr.P.C. whereby it is obligatory on the part of the trial Court to either enquire into the case himself or direct an investigation to be made by a police officer or by any other person for the purpose of deciding whether or not there is sufficient grounds for proceeding as the applicant/ accused was a resident of another district. Thus, the trial Court has failed in ascertaining the facts and

circumstances of the case as well as the sufficiency of material which may warrant the summoning of the applicant for committing the offence under Section 500 I.P.C.

6. It is also submitted that letters, which are stated to have been written by the applicant are confidential documents and there is no iota of evidence or material which may even remotely suggest that it was the applicant who had leaked these papers in the media and there is also no material or evidence which may suggest that on the basis of these letters, the recognition of the newspaper of the complainant was cancelled.

7. While drawing the attention of this Court towards the two newspapers cuttings, which have been placed on record, it is submitted that two other defamation complaint cases were filed by the applicant and the summoning order passed in both these complaints was challenged by filing application under Section 482 Cr.P.C. No.7123 of 2023 and 8636 of 2023 and vide orders dated 25.07.2023 and 29.08.2023, the proceedings of one case were stayed and in another case, the order pertaining to taking no coercive action was passed.

8. It is further submitted that the complainant/ opposite party No.2 is in a habit of filing frivolous complaints and in this regard when he filed a writ petition bearing Misc. Bench No.1303 of 2014, the same was dismissed by this Court with the cost of Rs. 1 lakh. It is also highlighted that applicant is also in a habit of blackmailing people and a criminal case against him was also lodged at police station- Hazaratganj.

9. It is further submitted that even if the case of the complainant is taken on its face, the same is covered under 8th Exception of Section 499 of I.P.C., as the applicant is a public representative and is duty bound to bring in knowledge any accusation against any person in the knowledge of those who are having lawful authority over the person with regard to subject matter of accusation.

10. It is further submitted that the summoning of the applicant has been passed in disregard to the settled principles of summoning an accused person to face trial and is an abuse of process of law and the same be set aside and proceedings of the Court below be quashed.

11. Reliance has been placed in this regard has been placed on the law laid down by Hon'ble Supreme Court in ***Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. MANU/SC/1655/2016 : (2017) 3 SCC 528***, ***Bansilal S. Kabra Vs. Global Trade Finance Limited and Anr.*** Passed by Bombay High Court in Criminal Application No.1344 of 2010 of date 16.1.2024, ***M/S Iveco Magirus Brandschutztechnik GMBH Vs. Nirmal Kishore Bhartiya & Anr. 2023 LiveLaw (SC) 860, National Bank of Oman v. Barakara Abdul Aziz and Anr. MANU/SC/1123/2012 : (2013) 2 SCC 488*** as well as a single Judge judgment of this Court passed in leading application U/s 482 No. 6048 of 2019 of dated 22.12.2023 and ***Vijay Bharadwaj and***

Others Vs. State of U.P. passed by a Coordinate Bench of this Court in *Application U/S 482 No.2430 of 2021 of date 03.01.2023.*

12. Learned AGA on the other hand submits that since it is a complaint case, it is for this Court to assess the propriety of the order passed by the trial Court.

13. Shri Pramod Kumar Shukla, learned counsel appearing for the informant/ complainant vehemently submits that complainant is enrolled on the rolls of Bar Council of Uttar Pradesh and regularly appears as an Advocate before this Court as well as before the District and Sessions Court, Central Administrative Tribunal and is also a member of Oudh Bar Association, Lucknow and in the light of Rule 51 of Bar Council of India, he is also having the status of a freelance journalist and is engaged in the profession for about 25 years and performing his duties with utmost honesty, sincerity, devotion and dedication.

14. It is further submitted that three criminal cases have been filed against the applicant on the instance of one Dayashankar, who happens to be a PCS Officer and applicant has highlighted his misdeeds with regard to official embezzlement and corrupt practices committed by him in his service tenure and due to this reason, three criminal cases have been lodged against him and the criminal history of the applicant has been explained in para No.6 of the counter affidavit.

15. It is vehemently submitted that applicant/ accused through various letters written to the Hon'ble Chief Minister and Chief Secretary of Uttar Pradesh and by circulating these letters in print media and digital media platforms harmed and tarnished the reputation of the complainant.

16. It is further submitted that the applicant/ accused in his letter as termed the complainant/ opposite party No.2 as a blackmailer and has also written letters to the aforesaid authorities whereby the reputation of the complainant/ opposite party No.2 has been spoiled in the eyes of his well wishers, family members, relatives and friends.

17. It is also submitted that these letters written by the accused/ applicant were also printed in some newspapers, which has caused serious harm, loss and damage to his reputation and the same has spoiled his name and reputation in the eyes of his friends, relatives and general public as these allegations of blackmailing were totally false.

18. It is also submitted that these defamatory letters were published on digital media i.e. *Bhadasformedia.com* and in support of the complaint, the complainant has produced a copy of these letters along with complaint and also testified himself and two of his witnesses, namely, Anil Kumar Singh and Ajai Kumar and the trial Court after considering the sufficient grounds had summoned the applicant to face trail and thus, no illegality has been committed therein by the trial Court.

19. It is further submitted that at the stage of summoning, only a prima facie case and sufficient grounds are required to be seen and meticulous exercise of appreciation of evidence is required to be done.

20. Reliance in this regard has been placed on the law laid down by Hon'ble Supreme Court in ***ShivJee Singh Vs. Nagendra Tiwary and others*** passed in *Criminal Appeal No.1158 of 2010 decided on 06.07.2010 arising out of SLP (Crl.) No. 1416 of 2009* and ***Rameshbhai Pandurao Hedau Vs. State of Gujarat (2010) 4 SCC 185.***

21. Having heard learned counsel for the parties and having perused the record, it is relevant to have a glance on the factual matrix of the case. The case of the complainant appears to be that two letters of date 25.09.2022 were written by the applicant/ accused persons to the Hon'ble Chief Minister and Chief Secretary of Uttar Pradesh and the language used therein is defamatory so far as the applicant is concerned. A copy of the complaint has been placed on record, which would demonstrate that the substance of both these letters have been placed in the complaint itself in para no.9 of the complaint wherein it is stated that various criminal cases pertaining to hatching conspiracy of exhortation, intimidation, theft and of molestation are registered against the complainant in different police stations and various newspapers have been registered by complainant giving different addresses and also that while he was pursuing his LLB, he was acting as a full fledged freelance journalist. It is also written in one of the letter described in para No.9 of the complaint, a copy of which has also been enclosed with the complaint that the complainant is making frivolous complaints against Veena Traders and also spreading false news against above Veena Traders on different whatsapp groups and an Officer, namely, Dayashankar had lodged an F.I.R. against him pertaining to blackmailing and the complainant by taking bribe money from the competitors of Veena Traders is placing wrong facts before local administration. The complainant in support of the allegations apart from producing the copy of the letters has also placed on record, the photocopy of two newspapers as well as print out of social media platforms and got his statement recorded under Section 200 Cr.P.C. as also of his witnesses under Section 202 Cr.P.C. The complainant/ opposite party No.2 in his statement recorded under Section 200 Cr.P.C. has stated that the applicant Brij Bhushan Sharan Singh in his various letters has addressed him as a conspirator, thief and have also circulated these letter in different social media platforms and newspapers and by doing this, an attempt has been made to tarnish his image and reputation. The opposite party No.2/ complainant has also produced two witnesses, namely, Anil Kumar Singh and Ajai Kumar, who had stated that they have seen these letters on social medial platforms and these letters were written with the intention of tarnishing the image and reputation of the complainant / opposite party No.2.

22. The trial Court by passing a short order of one page has summoned the applicant/ accused to face trial for committing offence under Section 500 I.P.C. It is also important at this stage to have a glance on the relevant provision of Section 499 I.P.C.:-

" Section 499:- Defamation

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

*First Exception.— **Imputation of truth which public good requires to be made or published.** — It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

*Second Exception.— **Public conduct of public servants.**— It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

*Third Exception.— **Conduct of any person touching any public question.**— It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.*

*Fourth Exception.— **Publication of reports of proceedings of Courts**.— It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.*

*Fifth Exception.— **Merits of case decided in Court or conduct of witnesses and others concerned**.— It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.*

*Sixth Exception.— **Merits of public performance.**— It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.*

*Seventh Exception.— **Censure passed in good faith by person having lawful authority over another.**— It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

*Eighth Exception.— **Accusation preferred in good faith to authorised person**.— It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

*Ninth Exception.— **Imputation made in good faith by person for protection of his or other's interests.**— It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

*Tenth Exception.— **Caution intended for good of person to whom conveyed or for public good**.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."*

23. The law with regard to the fact as to what is responsibility of the Trial Court while summoning a proposed accused in a complaint case, is now no more *res integra* and the same has been settled by the Hon'ble Supreme Court in the following cases:-

*"9. In **G.H.C.L. Employees Stock Option Trust VS. India Infalin Ltd. 2013 (4) SCC 505,** it was emphasized by the Hon'ble Supreme Court that "summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record."*

*10. In A***IR 1998 S. C . 128 , M/s. Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others** *it was held as under:-*

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

*11. In **AIR 2012 SUPREME COURT 1747 "Bhushan Kumar and Anr v. State (NCT of Delhi) and Anr"** Hon'ble Apex Court has held that:-*

"10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued."

*12. In **AIR 1976 SUPREME COURT 1947, Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & others,** it is held by The Apex Court that:-*

"It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merit or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one."

"4.It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

"It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a primafacie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statement of the witness recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

13. In ***AIR 2015 SUPREME COURT 923, Sunil Bharti Mittal v. Central Bureau of Investigation (Three Judges Bench),*** *Hon,ble Apex Court held as under:*

"45. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

46. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad-in-law if the reason given turns out to be ex facie incorrect.""

24. Learned counsel for the complainant has relied on the law laid down by Hon'ble Supreme Court in ***Abhijit Pawar (supra)*** and the relevant paragraphs of the same is reproduced as under:-

> ***"23.*** *Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction". There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.*
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> ***24.*** *The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka v. Najima Mamtaj [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] in the following words: (SCC p. 644, paras 11-12)*
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> > *"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process 'in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.*
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> > *12. The words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:*
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> > *'False complaints are filed against persons residing at far-off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.'*
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> > *The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."*
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> ***25.*** *For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie*

constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)

> *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*
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> *22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*

26. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)*

> *"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:*
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> > *'**2. (g)** "**inquiry**" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'*
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> *It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is*

necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

25. Relevant paragraphs of ***M/S Iveco Magirus Brandschutztechnik GMBH (supra),*** *which has been relied by applicant* is also reproduced for convenience as under:-

"32.1 The question that arose before this Court was, whether the High Court of Bombay was right in its view that when a Magistrate directs an enquiry under section 202 of the CrPC for ascertaining the truth or falsehood of a complaint and receives a report from the enquiring officer supporting a plea of self-defence made by the person complained against, is it not open to him to hold that the plea is correct on the basis of the report and the statements of witnesses recorded by the enquiring officer? Must the Magistrate, as a matter of law, issue process in such a case and leave the person complained against to establish his plea of self-defence at the trial?

33.1 We consider it appropriate to quote certain pertinent observations from such decision, hereinbelow:

It seems to us clear from the entire scheme of Chapter XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate He may remain present either in person or through a counsel or agent with a view to of what is going on. But since the very question for consideration being whether he should be be informed called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would hot be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued, nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.

33.2 Considering the decision in Vadilal Panchal (supra), what was said therein was explained in the following words:

13. we may point out that since the object of an enquiry under Section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. **"*

26. In ***National Bank of Oman v. Barakara Abdul Aziz (supra),*** hon'ble Supreme Court has highlighted as under:-

"8. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is. therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court,

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

27. The complainant/ opposite party No.2 has relied on the law laid down by Hon'ble Supreme Court in ***Shivjee Singh (supra)*** and para No.7 and 8 of that report appears to be important and relevant part of which is reproduced as under:-

"7. *.....By amending Act 25 of 2005, the postponement of the issue of process has been made mandatory where the accused is residing in an area beyond the territorial jurisdiction of the Magistrate concerned. Proviso to Section 202(1) lays down that direction for investigation shall not be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session or where the complaint has not been made by a court unless the complainant and the witnesses have been examined on oath under Section 200. Under Section 202(2) the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Session then in terms of the proviso to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath. Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is satisfied that there is no sufficient ground for proceeding. The exercise of this power is hedged with the condition that the Magistrate should record brief reasons for dismissing the complaint. Section 204, which talks of issue of process lays down that if the Magistrate taking cognizance of an offence is of the view that there is sufficient ground for proceeding then he may issue summons for attendance of the accused in a summons case. If it is a warrant case, then the Magistrate can issue warrant for causing attendance of the accused. Section 207 casts a duty on the Magistrate to supply to the accused, copies of the police report, the first information report recorded under Section 154, the statements recorded under Section 161(3), the confessions and statements, if any, recorded under Section 164 and any other document or relevant extract thereof, which is forwarded to the Magistrate along with the police report. Section 208 provides for supply of copies of statement and documents to the accused in the cases triable by the Court of Session. It lays down that if the case, instituted otherwise than on a police report, is triable exclusively by the Court of Session, the Magistrate shall furnish to the accused, free of cost, copies of the statements recorded under Section 200 or Section 202, statements and confessions recorded under Section 161 or Section 164 and any other document on which prosecution proposes to rely. Section 209 speaks of commitment of a case to the Court of Session when offence is triable exclusively by*

it. This section casts a duty on the Magistrate to commit the case to the Court of Session after complying with the provisions of Section 208. Once the case is committed, the trial is to be conducted by the Court of Session in accordance with the provisions contained in Chapter XVIII.

8. *The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI CrPC finds adequate support from the judgments of this Court in* ***Ramgopal Ganpatrai Ruia v. State of Bombay*** *[AIR 1958 SC 97 : 1958 Cri LJ 244 : 1958 SCR 618] ,* ***Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar*** *[AIR 1960 SC 1113 : 1960 Cri LJ 1499 : (1961) 1 SCR 1] ,* ***Chandra Deo Singh v. Prokash ChandraBose*** *[AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] ,* ***Nirmaljit Singh Hoon v. State of W.B.*** *[(1973) 3 SCC 753 : 1973 SCC (Cri) 521] ,* ***Kewal Krishan v. Suraj Bhan*** *[1980 Supp SCC 499 : 1981 SCC (Cri) 438] ,* ***Mohinder Singh v. Gulwant Singh*** *[(1992) 2 SCC 213 : 1992 SCC (Cri) 361] and* ***Chief Enforcement Officer v. Videocon International Ltd.*** *[(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471]."*

28. Learned counsel for the complainant has also relied on ***Rameshbhai Pandurao Hedau (supra)*** and the relevant paragraphs are reproduced here as under:-

"20. The settled legal position has been enunciated by this Court in several decisions to which we shall refer presently. The courts are ad idem on the question that the powers under Section 156(3) can be invoked by a learned Magistrate at a pre-cognizance stage, whereas powers under Section 202 of the Code are to be invoked after cognizance is taken on a complaint but before issuance of process. Such a view has been expressed in Suresh Chand Jain case as well as in Dharmeshbhai Vasudevbhai case and in Devarapalli Lakshminarayana Reddy case.

21. The three aforesaid cases have been cited on behalf of the parties. We may also refer to the decision of this Court in Dilawar Singh v. State of Delhi where the difference in the investigative procedure in Chapters XII and XV of the Code has been recognised and in that case this Court also appears to have taken the view that any Judicial Magistrate, before taking cognizance of an offence, can order investigation under Section 156(3) of the Code and in doing so, he is not required to examine the complainant since he was not taking cognizance of any offence therein for the purpose of enabling the police to start investigation. Reference has been made to the decision of this Court in Suresh Chand Jain case. In other words, as indicated in the decisions referred to hereinabove, once a Magistrate

takes cognizance of the offence, he is, thereafter, precluded from ordering an investigation under Section 156(3) of the Code.

22. It is now well settled that in ordering an investigation under Section 156(3) of the Code, the Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer, under Section 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

23. Reference was also made to the decision of this Court in Mohd. Yousuf v. Afaq Jahan where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed."

29. The perusal of the above noted case laws would sufficiently demonstrate that summoning in a criminal matter is a serious business and the Magistrate or the Trial Court, as the case may be, is obliged to go through the allegations levelled in the complaint in order to ascertain as to whether there are sufficient grounds for proceedings are existing and these sufficient grounds for proceeding further must be distinguished from sufficient ground for conviction, as the duty of the Magistrate is to assess the sufficiency of grounds only for moving further and not for conviction. Having regard to the amendment made under Section 202 Cr.P.C., it is incumbent on the Magistrate or the Trial Court, as the case may be, to either make an enquiry himself or to refer an investigation under Section 202 Cr.P.C., if the proposed accused person is resident of another district. The purpose of this inquiry or investigation, as the case may be, is to safeguard the interest of a proposed accused, who may be arrayed as an accused only on the basis of rivalry or for any other ulterior motive. Thus, this provision has been added in order to put the Magistrate or the Trial Court, as the case may be, on guard that if the material provided by the complainant/ informant is not sufficient enough, he is required to collect the material by ordering an investigation under Section 202 Cr.P.C. It is also not *res-integra* that the investigation as contemplated under Section 202 Cr.P.C. is different from the investigation, which may be ordered under Section 156 (3) Cr.P.C., as under Section 156 (3) Cr.P.C., the Magistrate can order investigation before taking cognizance while under Section 202 Cr.P.C., the Magistrate can order investigation after taking cognizance in order to satisfy himself that there are sufficient material or grounds exist for summoning a proposed accused person.

30. In ***Birla Corporation Limited and Ors. Vs. Adventz Investments and Holdings Limited and Ors., MANU/SC/0714/2019***, Hon'ble Supreme Court held as under;-

"26. Complaint filed Under Section 200 Code of Criminal Procedure and enquiry contemplated Under Section 202 Code of Criminal Procedure and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the Complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the Complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the Accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated Under Section 204 Code of Criminal Procedure The purpose of the enquiry Under Section 202 Code of Criminal Procedure is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the Accused.

27. The scope of enquiry under this Section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not Under Section 204 Code of Criminal Procedure or whether the complaint should be dismissed by resorting to Section 203 Code of Criminal Procedure on the footing that there is no sufficient ground for proceeding on the basis of the statements of the Complainant and of his witnesses, if any. At the stage of enquiry Under Section 202 Code of Criminal Procedure, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the Accused.

28. In ***National Bank of Oman v. Barakara Abdul Aziz and Anr. MANU/SC/1123/2012 : (2013) 2 SCC 488,*** *the Supreme Court explained the scope of enquiry and held as under:-*

> *9. The duty of a Magistrate receiving a complaint is set out in Section 202 Code of Criminal Procedure and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation Under Section 202 Code of Criminal Procedure is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry Under Section 202 Code of Criminal Procedure is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:*
>
> > *(i) on the materials placed by the Complainant before the court;*
> >
> > *(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and*
> >
> > *(iii) for deciding the question purely from the point of view of the Complainant without at all adverting to any defence that the Accused may have.*

29. In ***Mehmood Ul Rehman v. Khazir Mohammad Tunda and Ors. MANU/SC/0374/2015 : (2015) 12 SCC 420****, the scope of enquiry Under Section 202 Code of Criminal Procedure and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-*

> *2. Chapter XV Code of Criminal Procedure deals with the further procedure for dealing with Complaints to Magistrate. Under Section 200 Code of Criminal Procedure, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the Complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the Complainant, the witnesses and the Magistrate. Under Section 202 Code of Criminal Procedure, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person for the purpose of deciding whether or not there is sufficient ground for proceeding. If, after considering the statements recorded Under Section 200 Code of Criminal Procedure and the result of the inquiry or investigation Under Section 202 Code of Criminal Procedure, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.*

3 . Chapter XVI Code of Criminal Procedure deals with Commencement of Proceedings before Magistrate. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process Under Section 204(1) Code of Criminal Procedure for attendance of the Accused."

While discussing the amended section of 202 Crpc the Court highlighted the duty of the summoning Court in following words:-

"31. Under the amended Sub-section (1) to Section 202 Code of Criminal Procedure, it is obligatory upon the Magistrate that before summoning the Accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the Accused.

32. By Code of Criminal Procedure (Amendment) Act, 2005, in Section 202 Code of Criminal Procedure of the Principal Act with effect from 23.06.2006, in Sub-section (1), the words "...and shall, in a case where Accused is residing at a place beyond the area in which he exercises jurisdiction..." were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-

False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this Clause seeks to amend Sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the Accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the Accused.

33. Considering the scope of amendment to Section 202 Code of Criminal Procedure, in ***Vijay Dhanuka and Ors. v. Najima Mamtaj and Ors.MANU/SC/0251/2014 : (2014) 14 SCC 638****, it was held as under:-*

12. The use of the expression shall prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the Accused living beyond the territorial jurisdiction of the Magistrate.

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in ***Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr.MANU/SC/1655/2016 : (2017) 3 SCC 528*** *and* ***National Bank of Oman v. Barakara Abdul Aziz and Anr. MANU/SC/1123/2012 : (2013) 2 SCC 488.***

36. To be summoned/to appear before the Criminal Court as an Accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the Accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the Accused. In ***Punjab National Bank and Ors. v. Surendra Prasad SinhaMANU/SC/0345/1992 : 1993 Supp (1) SCC 499****, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.*

37. At the stage of issuance of process to the Accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the Accused. In ***Jagdish Ram v. State of Rajasthan and Anr. MANU/SC/0196/2004 : (2004) 4 SCC 432,*** *it was held as under:-*

> *10. ...The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the Accused, the Magistrate is not required to record reasons.*

38. Extensive reference to the case law would clearly show that the allegations in the complaint and Complainant's statement and other materials must show that there are sufficient grounds for proceeding against the Accused. In the light of the above principles, let us consider the present case whether the allegations in the complaint and the statement of the Complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate's satisfaction that there were sufficient grounds for proceeding against the Respondents-Accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the Respondents."

While ordering issuance of process against the Accused, the Magistrate must take into consideration the averments in the complaint, statement of the Complainant examined on oath and the statement of witnesses examined. As held in ***Mehmood Ul Rehman (supra)****, since it is a process of taking a judicial notice of certain facts which constitute an offence, there has to be application of mind whether the materials brought before the court would constitute the offence and whether there are sufficient grounds for proceeding against the Accused. It is not a mechanical process.*

As held in ***Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Anr. MANU/SC/0053/1963 : AIR 1963 SC*** *the object of an enquiry Under Section 202 Code of Criminal Procedure is for the Magistrate to scrutinize the material produced by the Complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process Under Section 204 Code of Criminal Procedure It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the Complainant.*

The Magistrate who is conducting an investigation Under Section 202 Code of Criminal Procedure has full power in collecting the evidence and examining the matter. We are conscious that once the Magistrate is exercised his discretion, it is not for the Sessions Court or the High Court to substitute its own discretion for that of the Magistrate to examine the case on merits. The Magistrate may not embark upon detailed enquiry or discussion of the merits/demerits of the case. But the Magistrate is required to consider whether a prima case has been made out or not and apply the mind to the materials before satisfying himself that there are sufficient grounds for proceeding against the Accused. In the case in hand i do not find that the satisfaction of the Magistrate for issuance of summons is well founded.

The object of investigation Under Section 202 Code of Criminal Procedure is"for the purpose of deciding whether or not there is sufficient ground for proceeding". The enquiry Under Section 202 Code of Criminal Procedure is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the Accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the Accused. As discussed earlier, issuance of process to the Accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed lightly. In the present case, the satisfaction of the Magistrate in ordering issuance of process

to the Respondents is not well founded and the order summoning the Accused cannot be sustained and is liable to be set aside.

It is well settled that the inherent jurisdiction Under Section 482 Code of Criminal Procedure is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the Accused, in exercise of the inherent powers, such proceedings can be quashed."

31. When we consider the factual matrix of this case in the background of above mentioned legal position, it would be evident that the applicant has written two letters, one to the Chief Minister and another to the Chief Secretary of the State of U.P. and writing of these letters have not been denied by the applicant. It appears to be an admitted situation that applicant is a public representative (Member of Parliament) and apart from the usual duties attached with a public representative, his duty may also include writing of grievances of the persons, to whom he is representing and in this scenario, if he has written some letters, which appear to be of confidential nature to some constitutional authorities, the same itself may not amount to any defamation. The complainant/ opposite party No.2 in his counter affidavit has himself mentioned criminal history of three cases lodged against him. The penal sections, pertaining to which these cases have been lodged, have not been mentioned, however, these three criminal cases are shown to have been registered at Police Station- Hazaratganj, Lucknow, Police Station- Wazirganj, Lucknow and at Police Station- Bithoor, Kanpur. In one of the letter written to the Chief Secretary of the State, the applicant has mentioned these three cases against the complainant/ opposite party No.2. One of the fact, which has been mentioned by the applicant in this letter is pertaining to the fine imposed by the Division Bench of this Court in Writ Petition No.1303 of 2014 and the same is fortified by a copy of the judgment of Writ Petition M/B No. 1303 of 2014 of date 18.02.2014 available on record, whereby the cost of Rs.1 lac was imposed on the complainant.

32. It is also to be recalled that as a public representative, certain issues are brought in the knowledge of the public representatives and the same may be based on the perception of the applicant in the mind of those, who have made the complaint about the complainant to the public representatives and it is in this regard, it cannot be said that the letters which have been written by the applicant have been written intentionally with a motive to tarnish the image of the complainant/ opposite party No.2 and these letters appear to have been written, so that public authorities may be made aware of the grievances of the persons, to whom applicant is representing. Moreover, there is no iota of evidence, which may suggest that these letters which appears to be of confidential nature, has been published in the newspapers or in the social media platforms by the applicant himself and therefore, so far as the publication of these letters is concerned, the same cannot be associated with the applicant.

33. Coming to the merits of the impugned judgment/ order, whereby the applicant has been summoned to face trial, this Court is having no hesitation in observing that the

trial Court has not taken pains even to consider the prima facie case or sufficiency of grounds for further proceedings of the case or even the ingredients of the offence have not been considered. Initiation of criminal proceedings against any person may not be based only on the statement of the complainant and his two witnesses and no accused should be summoned in a mechanical manner, without there being any sufficient material available in support of these accusations.

34. It is to be recalled that summoning in a criminal case is a very serious business as even after acquittal of an accused person after lengthy legal struggle, the same may leave a scar on his/ her reputation, apart from the mental pain and suffering, with which the proposed accused person would have to remain during the course of trial. Therefore, the duty of the trial Court was/ is to ascertain the sufficiency of grounds by sifting the evidence and material in order to assess the same. Though, it is not obligatory on the part of the Trial Court/ Magistrate to order for investigation under Section 202 Cr.P.C. in each and every case, but where it becomes necessary for the trial Court, the same must be ordered and the inquiry as contemplated under Section 202 Cr.P.C., clearly denotes the duty of the Court/ Magistrate in taking into account the material which has been placed on record and in proper case to order investigation as contemplated under Section 202 Cr.P.C.

35. Thus, the trial Court in this case appears to have not even considered the ingredients of the offences in order to assess as to whether the alleged statement made by the applicant is falling under any of the exceptions of Section 499 I.P.C. and also that whether the communication between the applicant and Chief Minister or the Chief Secretary of the State is a privileged communication or even as to whether there is any material or evidence at all available on record which may suggest that it was the applicant who had leaked the letter into the print media or social media and in absence of the same, the order of the trial Court may not stand the scrutiny of law.

36. Hon'ble Supreme Court in ***Ahmad Ali Quraishi and Ors. Vs. The State of Uttar Pradesh and Ors. (2020) 13 SCC 435,*** while considering the scope of 482 Cr.P.C., has opined as under:-

> *"10. Before we enter into facts of the present case and submissions made by the learned counsel for the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which is exercised by the High Court under Section 482 CrPC. This Court had the occasion to consider the scope and jurisdiction of Section 482 CrPC. This Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , had elaborately considered the scope and ambit of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the criminal proceedings. In para 102, this Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution/Section 482 CrPC by the High Court for quashing the criminal proceedings. Para 102 is as follows :*
>
> > "*102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by*

way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

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

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

11. This Court in Vineet Kumar v. State of U.P. [Vineet Kumar v. State of U.P., (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633] , had considered the jurisdiction of the High Court under Section 482 CrPC. In the above case also, the Additional Civil Judicial Magistrate had summoned the accused for offences under Sections 452, 376 and 323 IPC and the criminal revision against the said order was dismissed by the District Judge.

12. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy [State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 : 1977 SCC (Cri) 404] , held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated : (SCC p. 703)

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the

ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

(emphasis supplied)

13. A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It further held that court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6 : (SCC p. 94)

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

14. Further in para 8 the following was stated : (Devendrappa case [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , SCC p. 95)

"8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ."

15. In Sunder Babu v. State of T.N. [Sunder Babu v. State of T.N., (2009) 14 SCC 244 : (2010) 1 SCC (Cri) 1349] , this Court was considering the challenge to the order of the Madras High Court where application was under Section 482 CrPC to quash criminal proceedings under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 CrPC taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be

allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and held that the case fell within Category 7. The Supreme Court relying on Category 7 has held that the application under Section 482 deserved to be allowed and it quashed the proceedings.

16. After considering the earlier several judgments of this Court including the case of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , in Vineet Kumar [Vineet Kumar v. State of U.P., (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633] , this Court laid down following in para 41 : (Vineet Kumar case [Vineet Kumar v. State of U.P., (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633] , SCC p. 387)

> *"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , which is to the following effect : (SCC p. 379, para 102)*
>
> > *'102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'*
>
> *Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court [Vineet Kumar v. State of U.P., 2016 SCC OnLine All 1445] has noted the judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."*

37. The definition of defamation as enshrined in Section 499 of the I.P.C. would demonstrate evidently that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly lowers the moral of intellectual character of that person in the estimating of other. The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his conduct could cause such harm. Having regard to the fact that complainant has produced only two witnesses, who have given shaky evidence pertaining to the loss of reputation of applicant and no investigation is ordered by the trial Court under Section 202 Cr.P.C. and the language used in the letters coupled with the fact that these letters appear to be confidential letters, there appears neither any intent on the part of applicant to cause harm to the reputation of the complainant nor any actual harm appears to have been caused to the reputation of complainant. In short, both the elements i.e. *mens rea* and *actus reas* appears to be missing in this case.

38. Hon'ble Supreme Court in ***Google India Pvt. Ltd. Vs. Visakha Industries & Ors. MANU/SC/1708/2019*** has held that criminal offence of defamation is committed when a person makes a defamatory statement, which would consist of the imputation,

being conveyed to the person about whom imputation has been made. A publication on the other hand is made when the imputation is communicated to the person other than the person, about whom the defamatory statement is made. A person who makes defamatory imputation could also publish the same and then could be maker and publisher, both, on the other hand a person may be liable though, he may not have made the statement but he has published it.

39. In view of the facts and circumstance of the case, the impugned letters appears to have not been written or communicated to complainant and as stated earlier, these letters appears to be confidential and privileged communication and there is no material on record, which may suggest even remotely that it is applicant, who had caused these letters published in the print media or digital media or on social media platforms. Thus, ingredients of Section 499 I.P.C. are not attracting in this case and in the facts and circumstances of the present case, I am satisfied that proceedings of the case have been initiated without there being any sufficient grounds. The trial Court fails in not discussing the ingredients of the offence and there appears no evidence which may suggest even prima facie that it was the applicant, who has published or provided the impugned letters for publication in the newspapers or social media platforms. The letters appear to be privileged communication between two constitutional authorities. Applicant himself is having criminal history of three cases. The statements of complainant and his witnesses recorded under Sections 200 and 202 Cr.P.C. are cryptic and are not attracting ingredients of offence under Section 499 I.P.C. The letters also appear to have fallen in 8th Exception of Section 499 I.P.C. The trial Court has also not followed the procedure laid down in amended provision of Section 202 Cr.P.C. and the exercise done by it may not be termed as inquiry. The trial Court has not directed any investigation under 202 Cr.P.C. even when the material available before it was not sufficient to summon the applicant to face trial under Section 500 I.P.C. Thus, the instant case appears to be covered by guideline No.1 and 7 of ***Bhajan Lal (supra)*** and Exception Eighth of Section 499 I.P.C. Thus, I am of the considered view that permitting these criminal proceedings to continue against the applicant, would be nothing but abuse of process of law/ Court and requires interference of this Court.

40. The question whether Exception provided under Section 499 Cr.P.C. may be considered at this stage of proceedings, has been considered by Hon'ble Supreme Court in ***Rajendra Kumar Sitaram Pande Vs. Uttam, MANU/SC/0093/1999*** in following words:-

> *"7.... Under such circumstances the fact that the Accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the Accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process*

would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself....”

41. In result, the summoning order dated 10.01.2024 passed by the trial Court in Complaint Case No. 80654/ 2023 ***(Dr. Mohd. Kamran Vs. Brij Bhushan Sharan Singh)*** is set aside and all the proceedings of the above case are quashed. In result, the application filed by applicant, U/s 482 Cr.P.C., is hereby **allowed.**

Order Date :- 12.3.2024
Gurpreet Singh